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# **Education Council Meeting Packet**

**April 21, 2006**

**1:15 – 3:15 pm**

**Morris Hall**

**Allan G. Bense**  
**Speaker**

**Dennis K. Baxley**  
**Council Chair**

# Council Meeting Notice

## HOUSE OF REPRESENTATIVES

Speaker Allan G. Bense

### Education Council

**Start Date and Time:** Friday, April 21, 2006 01:15 pm

**End Date and Time:** Friday, April 21, 2006 03:15 pm

**Location:** Morris Hall (17 HOB)

**Duration:** 2.00 hrs

#### Consideration of the following bill(s):

HB 119 CS Postsecondary Student Fees by Zapata

HJR 447 CS Requiring 65 Percent of Education Funds for Classroom Related Instruction; Flexible Class Size Reduction Implementation by Pickens, Hasner, Stargel

HB 665 Florida Virtual School by Troutman

HB 1373 CS Supplemental Educational Services by Attkisson

HJR 1573 CS Equal Opportunity to Obtain a High Quality Education by Rubio

HB 7097 CS Postsecondary Education by Community Colleges & Workforce Committee

HB 7171 CS Charter Schools by Choice & Innovation Committee

**NOTICE FINALIZED on 04/20/2006 16:10 by Guilford.Tammie**



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 119 CS                      Postsecondary Student Fees  
**SPONSOR(S):** Zapata and others  
**TIED BILLS:**                              **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Colleges & Universities Committee	9 Y, 1 N, w/CS	Hatfield	Tilton
2) Education Appropriations Committee	11 Y, 1 N, w/CS	Hamon	Hamon
3) Education Council		Hatfield <i>JTB</i>	Cobb <i>lcc</i>
4) _____	_____	_____	_____
5) _____	_____	_____	_____

### SUMMARY ANALYSIS

This bill revises provisions relating to the determination of a student's residency status for tuition purposes by tying the statutorily-required minimum 12-month residency period to a student's initial enrollment in a Florida postsecondary institution and provides for reclassification as a resident for tuition purposes for students who meet certain criteria. The bill provides that in order to be classified a "dependent child" a student must receive at least 51 percent of the true cost-of-living expenses from his or her parent. The bill requires institutions of higher education to determine whether or not an admitted applicant is a dependent child and whether or not an admitted Florida resident applicant continues to meet the residency requirements at the time of initial enrollment.

The bill clarifies that dependent children of active duty military families who are stationed near a community college or university in a county contiguous to Florida are eligible for residency for tuition purposes. The bill extends residency status to full-time employees of specified international multilateral organizations based in Florida and their spouses and dependent children.

The bill also creates a limited number of exemptions from paying out-of-state fees at a community college or state university and requires the Department of Education (DOE) to administer the exemption program, develop an application form, and establish deadlines and guidelines for student participation. A student who meets certain requirements may be eligible for one of the exemptions.

For the 2006-2007 academic year, the DOE must distribute the exemptions: to the first 1,500 students currently enrolled in a community college or state university who have a cumulative grade point average of at least 2.0 and who submit an application to the DOE and meet the eligibility criteria; and to the top 500 students in academic performance in Florida public high schools who submit an application to the DOE and meet the eligibility criteria. Beginning in the 2007-2008 academic year the DOE must distribute no more than 500 new exemptions to the top 500 students in academic performance in Florida public high schools who submit an application to the DOE and meet the eligibility criteria. The DOE must issue the exemptions by August 31 of each year and notify the student and the postsecondary institution in which the student is enrolled.

In order for a student to retain the exemption, the bill requires a student to complete at least 12 semester credit hours or the equivalent in the previous academic year and maintain at least a 2.0 cumulative grade point average. The bill prohibits the exemption from being used for remedial courses, graduate level courses, or professional courses.

The overall fiscal impact of the bill is indeterminate at this time. See FISCAL COMMENTS for further details.

The bill provides an effective date of July 1, 2006.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

**STORAGE NAME:** h0119d.EDC.doc  
**DATE:** 4/19/2006

## **FULL ANALYSIS**

### **I. SUBSTANTIVE ANALYSIS**

#### **A. HOUSE PRINCIPLES ANALYSIS:**

**Provide limited government—** The bill requires postsecondary institutions to affirmatively determine whether a student is a dependent child and whether or not a student granted Florida residency meets the requirements of s. 1009.21, F.S., at the time of initial enrollment. Additional responsibilities and administrative costs may be incurred by postsecondary institutions in order to accomplish these tasks. The bill also provides for a limited number of exemptions from paying out-of-state fees at a community college or state university and requires the Department of Education (DOE) to administer the exemption program.

**Safeguard individual liberty—** The bill provides a more affordable education to those students who apply and receive an out-of-state fee exemption. Those who previously could not afford a postsecondary education may now be able to attend a community college or state university if they receive an exemption. However, the revised conditions for determining initial enrollment and reclassification may increase the number of students not eligible for residency for tuition purposes, resulting in a more expensive education for others.

**Empower Families—** The bill provides a more affordable education to those students who apply and receive an out-of-state fee exemption. This may benefit families who do not have the financial means to send a family member to college at out-of-state prices. However, the revised conditions for determining initial enrollment and reclassification may increase the number of students not eligible for residency for tuition purposes, resulting in a more expensive education for others.

#### **B. EFFECT OF PROPOSED CHANGES:**

##### **Background**

Current law requires students to be classified as residents or nonresidents for the purpose of assessing tuition in community colleges and state universities.<sup>1</sup> Classification as a resident for tuition purposes is also an eligibility criteria for participation in certain financial assistance programs such as the Florida Bright Futures Scholarship Program, the Florida Student Assistance Grant (FSAG) Program, and the Florida Resident Assistance Grant (FRAG) Program.<sup>2</sup>

To qualify as a resident for tuition purposes, a student, or the student's parents if the student is a dependent, must have established legal residence in the state and maintained legal residence in the state for at least 12 months immediately prior to the student's qualification. Presence in the state must have been for the purpose of maintaining a bona fide domicile, rather than for the purpose of maintaining a mere temporary residence or abode incident to enrollment in an institution of higher education.

Current law designates certain categories of persons as residents for tuition purposes, such as active duty members of the Armed Services of the U.S. residing or stationed in Florida and their dependents, U.S. citizens living on the Isthmus of Panama who have completed 12 consecutive months of college work at the FSU Panama Canal Branch and their dependents, and active duty members of a foreign nation's military who are serving as liaison officers and are residing or stationed in this state and their dependents.<sup>3</sup>

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<sup>1</sup> Section 1009.21, F.S.

<sup>2</sup> Section 1009.40, F.S.

<sup>3</sup> Section 1009.21(10), F.S.

## *OPPAGA Recommendations Regarding Residency for Tuition Determinations*

OPPAGA Report No. 03-29<sup>4</sup> found that although Florida law and rules are intended to enable universities and community colleges to accurately and consistently classify students for in-state and out-of-state residency, the process is substantially flawed. OPPAGA found that institutions were using inconsistent screening criteria and procedures creating the potential for misclassifications and variations in the threshold a student must meet to qualify for residency. OPPAGA identified three costly weaknesses in the current criteria and procedures used in classifying students as residents for tuition purposes:

1. Current law and rules do not provide adequate criteria governing under what specific circumstances students should be reclassified as Florida residents.
2. Current criteria do not adequately specify the determination of students' dependency status.
3. Institutions are applying varying standards for documenting residency.

The report recommends that to improve the residency classification process, the Legislature should amend current law to require that students (or their parents if the students are dependents) must maintain legal residence in the state for at least 12 months immediately prior to the student's initial enrollment or registration at a Florida public postsecondary institution to be eligible for classification for in-state residency. OPPAGA also recommended that Legislature more clearly define when a non-resident student could be eligible for reclassification as a resident.

OPPAGA estimates that institutions could receive an additional \$28.2 million in tuition revenues from out-of-state students if reclassifications were eliminated and these individuals remained enrolled.

### **Effect of Proposed Changes**

#### **Residency Status**

The bill revises residency criteria to require that a person reside in-state for 12 months immediately prior to initial enrollment in a postsecondary education program in Florida. The term "initial enrollment" is defined as the first day of classes. A student is eligible to be reclassified from nonresident to resident if the student provides documentation that supports the student's permanent residency in the state such as documentation of permanent full-time employment for a minimum of 12 months or purchase of a home in this state and residence in said home for a minimum of 12 months. If the student is a dependent child, the residency requirements apply to the student's parent. The bill provides that to be classified a "dependent child" one must receive at least 51 percent of the true cost-of-living expenses from his or her parent.

The bill requires institutions of higher education to determine whether or not an admitted applicant is a dependent child and whether or not an admitted Florida resident applicant continues to meet the residency requirements at the time of initial enrollment.

The bill clarifies that dependent children of active duty military families who are stationed near a community college or university in a county contiguous to Florida are eligible for residency for tuition purposes.

The bill updates an obsolete reference to the North American Aerospace Defense Command (NORAD) agreement.

The bill extends the categories of persons that are classified as residents for tuition purposes to include full-time employees of international multilateral organizations based in Florida that are recognized by

the U.S. Department of State and their spouses and dependent children. In March 2005, the Director of the Florida Branch of the Office of Foreign Missions indicated that the International Organization for Migration is the only international multilateral organization currently based in Florida. The Office of Foreign Missions is a department within the U.S. Department of State. At that time, it was estimated that there were currently less than ten people who might qualify under this provision of the bill.<sup>5</sup>

#### Out-of-state fee exemption

The bill also creates a limited number of exemptions from paying out-of-state fees at a community college or state university. A student who meets all of the following requirements may be eligible for one of the exemptions:

- Has resided in Florida with a parent for at least 3 consecutive years immediately preceding the date the student received a high school diploma, or its equivalent, and has attended a Florida public high school for at least 3 consecutive years during such time.
- Has been accepted by and enrolls in a community college or state university within 12 months of receiving the high school diploma.
- Has submitted an application for the exemption to the Department of Education (DOE), in the manner prescribed by the DOE by the deadline established by the DOE.

For the 2006-2007 academic year, the DOE is required to distribute the exemptions in the following manner:

- To the first 1,500 students currently enrolled in a community college or state university who have a cumulative grade point average of at least 2.0 and who submit an application to the DOE and meet the eligibility criteria.
- To the top 500 students in academic performance in Florida public high schools who submit an application to the DOE and meet the eligibility criteria.

Beginning with the 2007-2008 academic year, the DOE can issue up to 500 new exemptions per year to the top 500 students in academic performance in Florida public high schools who submit an application to the DOE and meet all eligibility criteria.

The bill provides that in order for a student to retain the exemption, a student must complete at least 12 semester credit hours, or the equivalent, in the previous academic year and maintain at least a 2.0 cumulative grade point average.

The DOE is required to administer the exemption program, develop an application form, and establish deadlines and guidelines for student participation. The DOE must issue the exemptions by August 31 of each year and must notify the student and the community college or state university in which the student is enrolled.

The bill prohibits the exemption from being used for remedial courses, graduate-level courses, or professional-level courses.

The bill provides an effective date of July 1, 2006.

#### C. SECTION DIRECTORY:

**Section 1:** Amends s. 1009.21, F.S., revising provisions relating to determination of resident status for tuition purposes; revising definitions; tying the qualification period for determining residency to the student's initial enrollment in a postsecondary education program in Florida; providing conditions for reclassification as a resident for tuition purposes; requiring that evidence be provided relating to legal

<sup>5</sup> Florida Department of Education 2005 Legislative Bill Analysis, HB 119, March 1, 2005, at 6.

residency and dependent status; providing duties of institutions of higher learning; updating obsolete terminology; and classifying as residents for tuition purposes certain employees of international multilateral organizations.

**Section 2:** Creates s. 1009.255, F.S., providing an out-of-state fee exemption; providing eligibility criteria; providing for distribution of the exemption; limiting participation in the program; requiring the Department of Education to administer the exemption program; and prohibiting use of the exemption for certain purposes.

**Section 3:** Provides an effective date of July 1, 2006.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

#### **1. Revenues:**

See FISCAL COMMENTS section.

#### **2. Expenditures:**

See FISCAL COMMENTS section.

### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

#### **1. Revenues:**

The bill does not appear to have a fiscal impact on local government revenues.

#### **2. Expenditures:**

The bill does not appear to have a fiscal impact on local government expenditures.

### **C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

Students who, in the past, may have been unable to afford a postsecondary education will have expanded educational opportunities if they fall into the new category within which students may be classified as residents for tuition purposes or if they receive one of the out-of-state fee exemptions. However, the revised conditions for determining initial enrollment and reclassification may increase the number of students not eligible for residency for tuition purposes, resulting in a more expensive education for others.

### **D. FISCAL COMMENTS:**

OPPAGA has estimated that if Florida eliminated the reclassification of nonresident students completely, institutions could receive \$28.2 million in additional tuition revenue from nonresidents if these individuals remained enrolled at a Florida public postsecondary institution.<sup>6</sup>

Expanding the categories of students who may be classified as residents for tuition purposes (the new category of full-time employees of international multilateral organizations based in Florida) and creating an out-of-state fee exemption may increase the number of students who enroll in state universities and community colleges because of the reduced cost to such students; therefore, these institutions may experience an increase in tuition and fee revenues. However, to the extent a student may have attended a state university or community college even if classified as an out-of-state student; an institution could experience a loss in tuition and fee revenues. Expanding the categories of students



an out-of-state fee exemption may increase the number of students who enroll in state universities and community colleges because of the reduced cost to such students; therefore, these institutions may experience an increase in tuition and fee revenues. However, to the extent a student may have attended a state university or community college even if classified as an out-of-state student; an institution could experience a loss in tuition and fee revenues. Expanding the categories of students who may be classified as residents for tuition purposes and the creation of an exemption for out-of-state fees could also result in the state funding more of the cost to provide instruction to such students.

The fiscal impact of the additional new residency for tuition purposes category (for full-time employees of international multilateral organizations based in Florida) on funding required or award amount for programs such as Bright Futures, FSAG, and FRAG is indeterminate.

The bill requires postsecondary institutions to affirmatively determine whether a student is a dependent child and whether or not a student granted Florida residency meets the requirements of s. 1009.21, F.S., at the time of initial enrollment. Additional responsibilities and administrative costs may be incurred by postsecondary institutions in order to accomplish these tasks.

### **III. COMMENTS**

#### **A. CONSTITUTIONAL ISSUES:**

##### **1. Applicability of Municipality/County Mandates Provision:**

The bill does not require a municipality or county to spend funds or to take any action requiring the expenditure of funds.

##### **2. Other:**

None

#### **B. RULE-MAKING AUTHORITY:**

None

#### **C. DRAFTING ISSUES OR OTHER COMMENTS:**

None

### **IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES**

On March 7, 2006, the Colleges and Universities Committee adopted a strike-all amendment to HB 119. The bill was reported favorably with a Committee Substitute (CS). The CS differs from the original bill in the following ways:

- Removes the word "exemption" from the catch-line to correct a drafting error.
- Includes an affidavit requirement for undocumented students that meet the eligibility requirements for residency for tuition purposes.
- Removes the financial aid section from the bill.

On April 17, 2006, the Education Appropriations Committee adopted an amendment to HB 119. The bill was reported favorably with a Committee Substitute. This Committee Substitute differs from the previous Committee Substitute by removing a provision relating to the determination of a student's residency status for tuition purposes and creating a new section of law that provides a limited number of exemptions from paying out-of-state fees at a community college or state university. The Committee Substitute requires the Department of Education (DOE) to administer the exemption program and provides that a student who meets all of the following requirements may be eligible for one of the exemptions:

- Has been accepted by and enrolls in a community college or state university within 12 months of receiving the high school diploma.
- Has submitted an application for the exemption to the Department of Education (DOE), in the manner prescribed by the DOE by the deadline established by the DOE.

The Committee Substitute provides that for the 2006-2007 academic year only, the DOE must distribute the exemptions to the first 1,500 students currently enrolled in a community college or state university who have a cumulative grade point average of at least 2.0 and who submit an application to the DOE. For the 2006-2007 academic year and each year thereafter, the DOE must distribute the exemptions to the top 500 students in academic performance in Florida public high schools who submit an application and meet the eligibility criteria. The DOE must issue the exemptions by August 31 of each year and notify the student and the postsecondary institution in which the student is enrolled.

In order for a student to retain the exemption, the Committee Substitute requires a student to complete at least 12 semester credit hours or the equivalent in the previous academic year and maintain at least a 2.0 cumulative grade point average. The Committee Substitute prohibits use of the exemption for remedial courses, graduate level courses, or professional level courses.

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CHAMBER ACTION

The Education Appropriations Committee recommends the following:

**Council/Committee Substitute**

Remove the entire bill and insert:

A bill to be entitled

An act relating to postsecondary student fees; amending s. 1009.21, F.S., relating to determination of resident status for tuition purposes; revising definitions; providing conditions for reclassification as a resident for tuition purposes; requiring that evidence be provided relating to legal residency and dependent status; providing duties of institutions of higher education; updating obsolete terminology; classifying as residents for tuition purposes certain employees of international multilateral organizations; creating s. 1009.255, F.S.; providing an out-of-state fee exemption; providing eligibility criteria; providing for distribution of the exemption; limiting participation in the program; requiring the Department of Education to administer the exemption program; prohibiting use of the exemption for certain purposes; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

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Section 1. Subsections (1), (2), and (3) and paragraphs (b) and (j) of subsection (10) of section 1009.21, Florida Statutes, are amended, and paragraph (1) is added to subsection (10) of that section, to read:

1009.21 Determination of resident status for tuition purposes.--Students shall be classified as residents or nonresidents for the purpose of assessing tuition in community colleges and state universities.

(1) As used in this section, the term:

(a) ~~The term~~ "Dependent child" means any person, whether or not living with his or her parent, who is eligible to be claimed by his or her parent as a dependent under the federal income tax code and who receives at least 51 percent of the true cost-of-living expenses from his or her parent, as further defined in rules of the State Board of Education.

(b) "Initial enrollment" means the first day of class at an institution of higher education.

(c) ~~(b)~~ ~~The term~~ "Institution of higher education" means any public community college or state university.

(d) ~~(c)~~ A "Legal resident" or "resident" means ~~is~~ a person who has maintained his or her residence in this state for the preceding year, has purchased a home which is occupied by him or her as his or her residence, or has established a domicile in this state pursuant to s. 222.17.

(e) "Nonresident for tuition purposes" means a person who does not qualify for the in-state tuition rate.

(f) ~~(d)~~ ~~The term~~ "Parent" means the natural or adoptive parent or legal guardian of a dependent child.

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52        ~~(g)(e)~~ A "Resident for tuition purposes" means ~~is~~ a person  
53 who qualifies as provided in subsection (2) for the in-state  
54 tuition rate; ~~a "nonresident for tuition purposes" is a person~~  
55 ~~who does not qualify for the in-state tuition rate.~~

56        (2)(a) To qualify as a resident for tuition purposes:

57        1. A person or, if that person is a dependent child, his  
58 or her parent or parents must have established legal residence  
59 in this state and must have maintained legal residence in this  
60 state for at least 12 consecutive months immediately prior to  
61 his or her initial enrollment in an institution of higher  
62 education qualification.

63        2. Every applicant for admission to an institution of  
64 higher education shall be required to make a statement as to his  
65 or her length of residence in the state and, further, shall  
66 establish that his or her presence or, if the applicant is a  
67 dependent child, the presence of his or her parent or parents in  
68 the state currently is, and during the requisite 12-month  
69 qualifying period was, for the purpose of maintaining a bona  
70 fide domicile, rather than for the purpose of maintaining a mere  
71 temporary residence or abode incident to enrollment in an  
72 institution of higher education.

73        (b) However, with respect to a dependent child living with  
74 an adult relative other than the child's parent, such child may  
75 qualify as a resident for tuition purposes if the adult relative  
76 is a legal resident who has maintained legal residence in this  
77 state for at least 12 consecutive months immediately prior to  
78 the child's initial enrollment in an institution of higher  
79 education qualification, provided the child has resided

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continuously with such relative for the 5 years immediately prior to the child's initial enrollment ~~qualification~~, during which time the adult relative has exercised day-to-day care, supervision, and control of the child.

(c) The legal residence of a dependent child whose parents are divorced, separated, or otherwise living apart will be deemed to be this state if either parent is a legal resident of this state, regardless of which parent is entitled to claim, and does in fact claim, the minor as a dependent pursuant to federal individual income tax provisions.

(d) A person who is classified as a nonresident for tuition purposes may become eligible for reclassification as a resident for tuition purposes if that person or, if that person is a dependent child, his or her parent presents documentation that supports permanent residency in this state rather than temporary residency for the purpose of pursuing an education, such as documentation of full-time permanent employment for the previous 12 months or the purchase of a home in this state and residence therein for the prior 12 months. If a person who is a dependent child and his or her parent move to this state while such child is a high school student and the child graduates from a high school in this state, the child may become eligible for reclassification as a resident for tuition purposes when the parent qualifies for permanent residency.

(3)(a) An individual shall not be classified as a resident for tuition purposes and, thus, shall not be eligible to receive the in-state tuition rate until he or she has provided such evidence related to legal residence and its duration or, if that

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108 individual is a dependent child, documentation of his or her  
109 parent's legal residence and its duration, as well as  
110 documentation confirming his or her status as a dependent child,  
111 as may be required by law and by officials of the institution of  
112 higher education from which he or she seeks the in-state tuition  
113 rate.

114 (b) Each institution of higher education must:

115 1. Determine whether an applicant who has been granted  
116 admission to that institution is a dependent child.

117 2. Affirmatively determine that an applicant who has been  
118 granted admission to that institution as a Florida resident  
119 meets the residency requirements of this section at the time of  
120 initial enrollment.

121 (10) The following persons shall be classified as  
122 residents for tuition purposes:

123 (b) Active duty members of the Armed Services of the  
124 United States, and their spouses and dependent children,  
125 dependents attending a public community college or state  
126 university within 50 miles of the military establishment where  
127 they are stationed, if such military establishment is within a  
128 county contiguous to Florida.

129 (j) Active duty members of the Canadian military residing  
130 or stationed in this state under the North American Aerospace  
131 Defense Command Air Defense (NORAD) agreement, and their spouses  
132 and dependent children, attending a community college or state  
133 university within 50 miles of the military establishment where  
134 they are stationed.

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(1) Full-time employees of international multilateral organizations based in Florida that are recognized by the United States Department of State and their spouses and dependent children.

Section 2. Section 1009.255, Florida Statutes, is created to read:

1009.255 Out-of-state fee exemption.--

(1) A student who meets all of the following requirements may be eligible for an exemption from paying out-of-state fees assessed pursuant to s. 1009.22, s. 1009.23, or s. 1009.24:

(a) The student resided in Florida with a parent for at least 3 consecutive years immediately preceding the date the student received a high school diploma, or its equivalent, and attended a Florida public high school for at least 3 consecutive school years during such time.

(b) The student is accepted by and enrolls in a community college or state university within 12 months after receiving a high school diploma or its equivalent.

(c) The student submits an application for the exemption to the Department of Education in the manner prescribed by the department and by the deadline established by the department.

(2)(a) For the 2006-2007 academic year, the Department of Education shall distribute the exemptions in the following manner:

1. To the first 1,500 students currently enrolled in a community college or state university who have a cumulative grade point average of at least 2.0 and who submit an



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162 application to the department and meet the criteria in  
163 subsection (1).

164 2. To the top 500 students in academic performance in  
165 Florida public high schools who submit an application to the  
166 department and meet the criteria in subsection (1).

167 (b) Beginning with the 2007-2008 academic year, the  
168 Department of Education shall issue no more than 500 new  
169 exemptions per year to the top 500 students in academic  
170 performance in Florida public high schools who submit an  
171 application to the department and meet the criteria in  
172 subsection (1).

173 (c) In order to retain the exemption, a student must have  
174 completed at least 12 semester credit hours or the equivalent in  
175 the previous academic year and maintain at least a 2.0  
176 cumulative grade point average.

177 (3)(a) The Department of Education shall administer the  
178 exemption program, develop an application form, and establish  
179 deadlines and guidelines for student participation.

180 (b) The department shall issue the exemptions by August 31  
181 of each year and shall notify the student and the community  
182 college or state university in which the student is enrolled.



183 (4) The exemption may not be used for remedial courses,  
184 graduate-level courses, or professional-level courses.

185 Section 3. This act shall take effect July 1, 2006.



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HJR 447 CS      Class Size Requirements and Classroom Instruction Expenditures  
**SPONSOR(S):** Pickens and others  
**TIED BILLS:**      **IDEN./SIM. BILLS:** SJR 1150

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Choice & Innovation Committee	5 Y, 2 N, w/CS	Hassell	Kooi
2) Education Appropriations Committee	10 Y, 4 N	Eggers	Hamon
3) Education Council		Hassell 	Cobb 
4) _____	_____	_____	_____
5) _____	_____	_____	_____

### SUMMARY ANALYSIS

The joint resolution proposes to amend Section 1 of Article IX of the Florida Constitution relating to public education.

The joint resolution moves the date required for full compliance with the constitution's class size reduction requirement from the beginning of the 2010 school year to the beginning of the 2009-10 school year. The joint resolution amends the method by which class size compliance is calculated so that class size is calculated by district average with no individual classroom having a teacher to student ratio of more than five students over the current constitutional cap. Furthermore, the joint resolution amends the constitution to state that class size compliance is calculated according to teacher-student ratio rather than teacher-classroom ratio.

The joint resolution requires that by the beginning of the 2009-10 school year and for each subsequent school year all school districts are required to expend at least sixty-five percent of total funds received by school districts for operational expenditures for purposes directly related to classroom instruction.

The joint resolution provides the governor with the authority to grant, partially grant, or deny a temporary waiver by a school district of the class size or the classroom instruction expenditure requirements in exceptional circumstances.

The joint resolution will have an indeterminate fiscal impact; however, there will be costs relating to placing the joint resolution on the ballot and publishing required notices. Please see the FISCAL ANALYSIS section of this analysis.

If the joint resolution is passed in the 2006 Legislative Session, the proposed amendment would be placed before the electorate at the 2006 general election, and if adopted will take effect January 2, 2007.

## **FULL ANALYSIS**

### **I. SUBSTANTIVE ANALYSIS**

#### **A. HOUSE PRINCIPLES ANALYSIS:**

*Provide limited government* – The joint resolution revises the constitution's class size requirement to be calculated based on the district's average class size for students in prekindergarten through 12 and requires that all school districts spend at least sixty-five percent of all operational expenditures for purposes directly related to classroom instruction.

*Safeguard Individual Liberty* – The joint resolution provides the school districts with flexibility in assigning students and operating more efficiently by prioritizing funding in areas that will produce greater student achievement.

#### **B. EFFECT OF PROPOSED CHANGES:**

### **CONSTITUTIONAL AMENDMENT**

#### **Present Situation**

##### *Constitutional Requirement*

On November 5, 2002, the electors of Florida approved an amendment to Art. IX, s.1 of the Florida Constitution relating to public education. The constitutional provision requires that the state legislature "shall make adequate provision to ensure that" there are a sufficient number of classrooms by the start of the 2010-11 school year so that a certain number of students is not exceeded in each classroom. The current constitutional provision sets forth the maximum class sizes as follows:

- Prekindergarten through grade 3 may not exceed 18;
- Grades 4 through 8 may not exceed 22; and
- Grades 9 through 12 may not exceed 25.

The constitutional provision further provides that beginning with the 2003-2004 fiscal year, the legislature shall provide sufficient funds to reduce the average number of students in the classroom by at least two students per year until the maximum number of students per classroom does not exceed the requirement in 2010-2011. The requirements do not apply to extracurricular classes and the costs specifically associated with reducing class size are the responsibility of the state and not the local school districts.

##### *Compliance*

The Legislature subsequently enacted Senate Bill 30A (2003) which amended section 1003.03, F.S., to implement the class size amendment.

Section 1003.03(2)(a)(b), F.S., provides that beginning with the 2003-2004 fiscal year, each school district that is not in compliance with the maximum class size requirements is required to reduce the average number of students per classroom for each of the three grade groups by at least two students

per year.<sup>1</sup> Determination of the average number of students per classroom for each of the three grade groups shall be as follows:<sup>2</sup>

- Fiscal years 2003-2004 through 2005-2006 shall be calculated at district level.
- Fiscal years 2006-2007 through 2007-2008 shall be calculated at the school level.
- Fiscal years 2008-2009, 2009-2010, and thereafter shall be calculated at the individual classroom level.

School districts must consider, but are not limited to, implementing the following options in order to meet the required maximum constitutional class size and the required two student per year reduction:<sup>3</sup>

- Encourage dual enrollment courses.
- Encourage courses from the Florida Virtual School.
- Require no more than 24 credits to graduate from high school.
- Allow students to graduate from high school as soon as they pass the grade 10 FCAT and complete the courses required for high school graduation.
- Use innovative methods to reduce the cost of school construction costs.
- Use joint-use facilities.
- Adopt alternative methods of class scheduling, such as block scheduling.
- Redraw school attendance zones.
- Operate schools beyond the normal operating hours.
- Use a year-round school and other non-traditional calendars.
- Review and consider amending any collective bargaining contracts that hinder the implementation of class size reduction.
- Use any other approach not prohibited by law.

The Department of Education (DOE) has interpreted the class size constitutional provision and the above-referenced implementing statute as prohibiting the use of co-teaching or team teaching as a means by which to meet the class-size amendment's requirements relating to number of students per classroom.

### *Implementation Schedule*

Pursuant to section 1003.03(4)(a), F.S., beginning in the 2003-2004 fiscal year, the DOE reviews compliance with class size reduction and if it is determined that a district has not complied with the statutory requirements for that year, the DOE is required to calculate the amount from the class size reduction operating categorical which is proportionate to the amount of the district's failure to comply with class size reduction. That amount is transferred by the Governor's office from the district's class size reduction operating categorical allocation to the district's fixed capital outlay appropriation to be used to meet the class size reduction requirements. However, the Legislative Budget Commission may approve an alternate amount of funds to be transferred if the Commissioner and the State Board of Education determine that a district has been unable to meet class size reduction requirements despite appropriate efforts to do so.

Beginning in the 2005-2006 school year and each year thereafter, each district identified by the DOE that has not met the class size reduction requirements will be reported to the Legislature and will be required to implement one of the following policies in the subsequent school year: year-round schools; double sessions; rezoning; or maximizing use of instructional staff by changing teacher loads and

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<sup>1</sup> For purposes of determining the baseline from which each district's average class size must be reduced for the 2003-2004 school year, the DOE is required to use data from the February 2003 student membership survey updated to include classroom identification numbers. s. 1003.03(2)(c), F.S.

<sup>2</sup> Currently, the DOE is required to annually calculate each of these three average class size measures based on the October student membership survey.

<sup>3</sup> s. 1003.03(3), F.S.

scheduling of planning periods, deploying school district employees who have professional certification to the classroom, using adjunct educators, operating school beyond the normal operating hours to provide classes in the evening, or operating more than one session during the day.<sup>4</sup>

Beginning in the 2006-2007 school year, the DOE, in addition to its enforcement authority in section 1008.32, F.S., must develop a compliance plan for each non-compliant district, that must include rezoning for maximum use of space while minimizing additional transportation costs.<sup>5</sup>

### *Appropriated Funds*

As of the 2005-2006 school year, the Legislature has appropriated a total of \$3,752,187,943 toward reduction of class sizes pursuant to the constitutional requirement. Facilities funding was \$783,400,000 of that total while the remaining \$2,968,787,943 has been allocated toward operating expenses. The chart below shows the amount of funding spent on operating and facilities relating to class size:

Year	2003-04	2004-05	2005-06
<b>Operating funds</b>	468,198,634	972,191,216	1,507,199,696
<b>Facilities funds</b>	600,000,000	100,000,000	83,400,000
<b>Total</b>	<b>1,068,198,634</b>	<b>1,072,191,216</b>	<b>1,590,599,696</b>

### *District Compliance*

The data listed below is taken from the DOE's class size compliance calculations and indicates that since '02-'03, class size in grades preK-3 has declined from 23.07 to 18.16, in grades 4 through 8 from 24.16 to 20.48, and in grades 9 through 12 from 24.10 to 22.96.

<b>STATEWIDE DISTRICT CLASS-SIZE AVERAGES</b>			
Year	Grades PreK – 3	Grades 4 – 8	Grades 9 – 12
2002-03	23.07	24.16	24.10
2003-04	20.54	22.43	24.06
2004-05	18.98	21.32	23.73
2005-06	18.16	20.48	22.96
Change from 2002-03	(4.91)	(3.68)	(1.14)

Pursuant to section 1003.03(4)(a), F.S., districts not in compliance with class size reduction requirements are subject to a transfer of class size operating funds to a capital outlay category which is proportionate to the district's failure to comply with class size reduction. In the 2003-04 fiscal year, \$1,479,948 was transferred for eight districts; in the 2004-05 fiscal year, \$1,076,719 was transferred for nine districts; and in the 2005-06 fiscal year, \$496,059 was transferred for one district. Noncompliance in fiscal year 2005-06 was limited to grades PK-3.

### *Classroom Instruction Expenditure*

This joint resolution would require that all districts spend no less than 65 cents out of every dollar received for in-classroom expenditures. According to the definition of in-classroom expenditures of the National Center for Education Statistics (NCES), the average percentage of such expenditures within Florida's 67 school districts during the 2003-2004 school year was 59.19%.<sup>6</sup>

<sup>4</sup> s. 1003.03(4)(b), F.S.

<sup>5</sup> s. 1003.03(4)(c), F.S.

<sup>6</sup> This figure was determined through data provided by the Florida Department of Education and has not been finalized by NCES.

## **Effects of Proposed Changes**

### *Class Size Reduction*

The joint resolution moves the date required for full compliance with the constitution's class size reduction requirement from the beginning of the 2010 school year to the beginning of the 2009-10 school year. It also clarifies that the constitutional class size requirements do not apply to virtual classes. The joint resolution amends the method by which class size compliance is calculated so that class size is calculated by district average with no individual classroom having a teacher to student ratio of more than five students over the current constitutional cap.

Furthermore, the joint resolution revises the current requirement to state that class size compliance is calculated according to student-teacher ratio rather than student-classroom ratio. This would change the current requirements for class size compliance to allow districts to use co-teaching, team teaching and other innovative methods to comply with class size reduction.

Changing the class size calculation method to school district average class size provides districts with flexibility to meet the class size requirements and reduces the likelihood that districts would have to implement the options required in s. 1003.03(3), F.S., to reduce class size in accordance with the current, more rigid requirements.<sup>7</sup> The joint resolution requires the Legislature to continue to provide sufficient funds to reduce the school district average class size by at least two students per year until the school district average class size for each of the grade groupings does not exceed the district average class size requirement.

If the joint resolution were to be approved by the electors in the November 2006 election, then the class size calculations would be at the school district average consistent with the proposed amendment to the Constitution. Given that the current implementing statute still requires that in the fiscal years 2006-2007 through 2007-2008, compliance for each of the three grade groups is to be calculated by the average at the school level, section 1003.03(2)(b), F.S., would need to be amended in a separate bill to align with the amended class size requirements.

### *Classroom Instruction Expenditure Requirement*

The joint resolution requires that by the beginning of the 2009-10 school year and for each subsequent school year all school districts are required to expend at least sixty-five percent of total funds received by school districts for operational expenditures for purposes directly related to classroom instruction. This provision will require districts to focus attention on more closely monitoring what funds are being spent in the classroom and how they can prioritize funding in areas that increase student performance.

For purposes of this Constitutional amendment, the joint resolution does not define "total funds" or "classroom instruction." Instead, the joint resolution provides that both total funds and classroom instruction will be defined by general law. If the joint resolution were to be approved by the electors in the November 2006 election, implementing legislation would determine the details of what constitutes total funds and expenditures on classroom instruction and compliance requirements.

### *Temporary Waiver*

The joint resolution also provides the governor with the authority to grant, partially grant, or deny a temporary waiver by a school district of the class size or the classroom instruction expenditure requirements in exceptional circumstances.

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<sup>7</sup> These options are listed on page 3 of this analysis.

## REVISION OR AMENDMENT TO THE STATE CONSTITUTION

### Background

Amendments to Florida's Constitution can be proposed by five distinct methods: 1) joint legislative resolution, 2) the Constitutional Revision Commission, 3) citizen's initiative, 4) a constitutional convention, or 5) the Taxation and Budget Reform Commission.<sup>8</sup>

Depending on the method, all proposed amendments or revisions to the Constitution must be submitted to the electors at the next general election 1) held more than ninety days after the joint resolution, 2) 180 days after the report of the Constitutional Revision Commission or Taxation Budget Reform Commission, or 3) for citizen initiatives, if all the required signatures were submitted prior to February 1 of the year in which the general election is to be held.<sup>9</sup>

Article XI, s.1, of the Florida Constitution provides for proposed changes to the Constitution originating with the Legislature:

**SECTION 1: Proposal by legislature.** – Amendment of a section or revision of one or more articles, or the whole, of this constitution may be proposed by joint resolution agreed to by three-fifths of the membership of each house of the legislature. The full text of the joint resolution and the vote of each member voting shall be entered on the journal of each house.

Once in the tenth week, and once in the sixth week immediately preceding the week in which the election is held, the proposed amendment or revision, with notice of the date of election at which it will be submitted to the electors, must be published in one newspaper of general circulation in each county in which a newspaper is published.<sup>10</sup> If the joint resolution is passed in this session, the proposed amendment would be placed before the electorate at the 2006 general election, unless it is submitted at an earlier special election pursuant to a law enacted by an affirmative vote of three-fourths of the membership of each house of the Legislature and is limited to a single amendment or revision.<sup>11</sup>

The Florida Constitution provides that if the proposed amendment or revision is approved by the vote of electors, it is effective as an amendment to or revision of the Constitution of the state on the first Tuesday after the first Monday in January following the election, or on such other date as may be specified in the amendment or revision.<sup>12</sup>

### Effects of Proposed Changes

HJR 447 proposes to amend Article XI, s.1, of the Florida Constitution. If the joint resolution is passed in this session, the proposed amendment would be placed before the electorate at the 2006 general election, and if adopted will take effect January 2, 2007.

### C. SECTION DIRECTORY:

The legislation is a joint resolution proposing a constitutional amendment and, therefore, does not contain bill sections. The joint resolution proposes to amend Section 1 of Article IX of the Florida Constitution.

<sup>8</sup> See Art. XI, ss. 1-4, and 6, Fla. Const.

<sup>9</sup> See Art. XI, ss 2, 5, and 6, Fla. Const.

<sup>10</sup> See Art. XI, s. 5(c), Fla. Const.

<sup>11</sup> See Art. XI, s.5(a), Fla. Const.

<sup>12</sup> See Art. XI, s.5(e), Fla. Const.



## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

The joint resolution does not appear to have a fiscal impact on state revenues.

#### 2. Expenditures:

##### *Class Size Requirement*

As of the 2005-2006 school year, the Legislature has appropriated a total of \$3,752,187,943 toward reduction of class sizes pursuant to the constitutional requirement. Facilities funding was \$783,400,000 of that total while the remaining \$2,968,787,943 has been allocated toward operating expenses. The chart below shows the amount of funding spent on operating and facilities relating to class size:

Year	2003-04	2004-05	2005-06
Operating funds	468,198,634	972,191,216	1,507,199,696
Facilities funds	600,000,000	100,000,000	83,400,000
Total	1,068,198,634	1,072,191,216	1,590,599,696

The joint resolution has an indeterminate fiscal impact on meeting the class size reduction requirements. The original Revenue Estimating Conference for the 2002 constitutional amendment had estimated a range of approximately \$20 billion to \$27.5 billion in operating and capital outlay costs for meeting class size requirements through 2010-2011. Current expenditure trends appear to indicate this initial estimate was fairly accurate. The Governor's recommended budget includes \$2.13 billion for operating, which is an increase of \$622 million over the 2005-06 fiscal year. The DOE's legislative budget request projected a \$4.2 billion class size reduction school construction need spread over five years (2006-07 through 2010-11), with \$2.0 billion requested for the 2006-07 fiscal year. However, it is important to note the following:

- Statewide FTE projections have declined significantly since the DOE estimate,
- The DOE has received the districts' five-year capital outlay plan since the DOE estimate, and
- The DOE's estimate included the cost for student enrollment growth, which historically has been locally funded.

District needs related to class size change year-to-year as more accurate data on currently available classroom space is collected, student enrollment fluctuations are analyzed, and other student/teacher demographics change. The joint resolution authorizes changes in the current law and practice relating to flexibility in the use of funds, utilization of existing facilities, construction needs, and requirements for the recruitment and retention of teachers. This added flexibility may allow available funds to be used on district determined strategies that would have a greater impact on positive student achievement.

##### *Revision of State Constitution*

The Division of Elections with the Department of State estimates that the non-recurring cost of compliance with the publication requirements would be approximately \$50,000 in 2006-2007 fiscal year.

**Non-Recurring**

**FY 2006-07**

Department of State, Division of Elections

Publication Costs

\$50,000 (General Revenue)

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

**1. Revenues:**

The joint resolution does not appear to have any impact on local government revenues.

**2. Expenditures:**

The joint resolution does not appear to have any impact on local government expenditures.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

Any direct impact on the private sector would be difficult to determine.

**D. FISCAL COMMENTS:**

See Fiscal Impact on State Government.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

**1. Applicability of Municipality/County Mandates Provision:**

The mandates provision relates only to general bills and therefore would not apply to this joint resolution.

**2. Other:**

None.

**B. RULE-MAKING AUTHORITY:**

The joint resolution does not raise the need for rules or rulemaking authority or direct an agency to adopt rules.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

Passage of a joint resolution in a committee requires a simple majority vote.

The joint resolution amends the constitutional class size requirements, but it cannot amend the statutory enacting provisions for those requirements. If the electors of Florida approve the joint resolution then section 1003.03(2)(b), F.S., will need to be amended in a separate bill to align with the amended class size requirements.

**IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES**

On January 26, 2006, the Choice and Innovation Committee adopted one amendment and reported the bill favorably with a Committee Substitute (CS). The amendment revised the order of the ballot summary.

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CS

CHAMBER ACTION

The Choice & Innovation Committee recommends the following:

**Council/Committee Substitute**

Remove the entire bill and insert:

House Joint Resolution

A joint resolution proposing an amendment to Section 1 of Article IX of the State Constitution relating to public education.

Be It Resolved by the Legislature of the State of Florida:

That the following amendment to Section 1 of Article IX of the State Constitution is agreed to and shall be submitted to the electors of this state for approval or rejection at the next general election or at an earlier special election specifically authorized by law for that purpose:

ARTICLE IX

EDUCATION

SECTION 1. Public education.--

(a) The education of children is a fundamental value of the people of the State of Florida. It is, therefore, a paramount duty of the state to make adequate provision for the education of all children residing within its borders. Adequate

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24 provision shall be made by law for a uniform, efficient, safe,  
25 secure, and high quality system of free public schools that  
26 allows students to obtain a high quality education and for the  
27 establishment, maintenance, and operation of institutions of  
28 higher learning and other public education programs that the  
29 needs of the people may require.

30 (b) To assure that children attending public schools  
31 obtain a high quality education, the legislature shall make  
32 adequate provision to ensure that, by the beginning of the 2009-  
33 2010 ~~2010~~ school year and for each school year thereafter, there  
34 are a sufficient number of classrooms so that:

35 (1) The school district average ~~maximum~~ number of students  
36 who are assigned to each teacher who is teaching in public  
37 school classrooms for prekindergarten through grade 3 does not  
38 exceed 18 students and the number of students who are assigned  
39 to one teacher in an individual class does not exceed 23  
40 students;

41 (2) The school district average ~~maximum~~ number of students  
42 who are assigned to each teacher who is teaching in public  
43 school classrooms for grades 4 through 8 does not exceed 22  
44 students and the number of students who are assigned to one  
45 teacher in an individual class does not exceed 27 students; and

46 (3) The school district average ~~maximum~~ number of students  
47 who are assigned to each teacher who is teaching in public  
48 school classrooms for grades 9 through 12 does not exceed 25  
49 students and the number of students who are assigned to one  
50 teacher in an individual class does not exceed 30 students.

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The class size requirements of this subsection do not apply to extracurricular or virtual classes. Payment of the costs associated with reducing class size to meet these requirements is the responsibility of the state and not of local school ~~schools~~ districts. Beginning with the 2003-2004 fiscal year, the legislature shall provide sufficient funds to reduce the school district average class size number of students in each classroom by at least two students per year until the school district average class size for each of the grade groupings ~~maximum number of students per classroom~~ does not exceed the requirements of this subsection.

(c) By the beginning of the 2009-2010 school year and for each school year thereafter, at least sixty-five percent of total funds, as defined by law, received by school districts for operational expenditures shall be expended for purposes directly related to classroom instruction, as defined by law.

(d) In exceptional circumstances a school district may request from the governor a temporary waiver of the class size requirements of subsection (b) or the classroom instruction expenditure requirement of subsection (c), which the governor may grant, partially grant, or deny.

(e) ~~(1) (b)~~ Every four-year old child in Florida shall be provided by the state a high quality prekindergarten ~~pre-kindergarten~~ learning opportunity in the form of an early childhood development and education program which shall be voluntary, high quality, free, and delivered according to professionally accepted standards. An early childhood development and education program means an organized program

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designed to address and enhance each child's ability to make age appropriate progress in an appropriate range of settings in the development of language and cognitive capabilities and emotional, social, regulatory, and moral capacities through education in basic skills and such other skills as the legislature may determine to be appropriate.

(2) ~~(e)~~ The early childhood education and development programs provided by reason of this subsection ~~subparagraph (b)~~ shall be implemented no later than the beginning of the 2005 school year through funds generated in addition to those used for existing education, health, and development programs. Existing education, health, and development programs are those funded by the state as of January 1, 2002, that provided for child or adult education, health care, or development.

BE IT FURTHER RESOLVED that the following statement be placed on the ballot:

CONSTITUTIONAL AMENDMENT

ARTICLE IX, SECTION 1

REQUIRING 65 PERCENT OF EDUCATION FUNDS FOR CLASSROOM RELATED INSTRUCTION; FLEXIBLE CLASS SIZE REDUCTION IMPLEMENTATION.--Proposing an amendment to the State Constitution to require school districts to expend at least 65 percent of their operational funds for classroom related instruction as defined by law; to provide flexibility for school districts in meeting class size reduction requirements by calculating compliance at a school district average number of students who are assigned to a teacher in specified grades; to specify the maximum number of students who may be assigned to

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108 one teacher in an individual class; to require implementation of  
109 the class size reduction requirements and the classroom  
110 instruction expenditure requirement by the beginning of the  
111 2009-2010 school year and for each school year thereafter; to  
112 exempt virtual classes from the class size requirements; and to  
113 authorize, in exceptional circumstances, a school district to  
114 request from the Governor a temporary waiver of the class size  
115 reduction requirements or the 65-percent classroom instruction  
116 expenditure requirement.





## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 665  
**SPONSOR(S):** Troutman  
**TIED BILLS:**

Florida Virtual School

**IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Choice & Innovation Committee	7 Y, 0 N	Hunker	Kooi
2) Education Appropriations Committee	13 Y, 1 N	Eggers	Hamon
3) Education Council		Hunker <i>JA</i>	Cobb <i>lee</i>
4) _____	_____	_____	_____
5) _____	_____	_____	_____

### SUMMARY ANALYSIS

This bill amends s. 1002.37, F.S., to establish the Students Earning Additional Recovery Credits and Honors (SEARCH) Program within the Florida Virtual School (FLVS). Students can recover credits needed for graduation or earn honors course credit or other course credit through the SEARCH Program.

This bill provides that school district franchises of the Florida Virtual School that operated during the fiscal years 2004-2005 and 2005-2006 are eligible to participate and that a school district franchise's portion of the SEARCH Program funds may not exceed the district's proportion of the total unweighted full-time equivalent students enrolled in grades 9 through 12 in the participating school districts.

The bill states that funding for the SEARCH Program will be for full-time equivalent student credit to the extent provided by the General Appropriations Act (GAA) at a maximum of two credits per student. See the FISCAL COMMENTS Section of the analysis.

The bill provides that it shall take effect July 1, 2006.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

*Empower Families* – The bill provides parents of public school students with an educational choice opportunity by providing funding for up to an additional 2 credits that may be used through the Florida Virtual School to recover credits needed for graduation, or to receive honors course credit, or other course credit.

*Safeguard Individual Liberty* – This bill maintains parental choice by providing parents of public school students with an additional education opportunity.

#### B. EFFECT OF PROPOSED CHANGES:

The Florida Legislature initially funded a grant-based pilot project in 1997, creating Florida's first Internet-based, public high school. In 2000, s. 228.082, F.S.<sup>1</sup> established the Florida Virtual School (FLVS) as an independent educational entity housed within the Commissioner of Education's Office of Technology and Information Services. The Legislature created the FLVS Board of Trustees, which was authorized to create rules and procedures for the FLVS, enter into agreements with distance learning providers, and acquire, enjoy, use, and dispose of patents, trademarks, copyrights, licenses, rights and interests.

In 2003, the legislature authorized the FLVS Board of Trustees to franchise with district school boards. The FLVS Board of Trustees is authorized to establish the criteria for defining the elements of an approved franchise, the terms and conditions governing franchise agreements, and the performance and accountability measures for a school district franchise. The board of trustees is required to report the performance of each school district to the Commissioner of Education.<sup>2</sup>

School districts are authorized to count a maximum full-time equivalent (FTE) of 25 hours per week under the Florida Education Finance Program (FEFP).<sup>3</sup> School district franchises do not receive additional funding for students to take classes through the FLVS in addition to all of the other classes they take at their regular public school. In order to take a course through the FLVS, students at district franchise schools are required to reduce their class loads at their regular public schools in order to meet the 25 hour per week FTE cap. This bill provides funding for students to take up to an additional 2 credits through the FLVS without reducing their normal class load at their regular public school.

School districts that operated a franchise for the 2004-2005 and 2005-2006 fiscal years will be eligible to participate in the SEARCH Program in 2006-2007 and thereafter. This provision limits the program to the seven school district franchises currently in existence.<sup>4</sup> This limitation would test the fiscal impact of the SEARCH Program as a pilot before future school district franchises are permitted to participate. It would also prevent school districts from entering into FLVS franchise agreements solely for the purpose of taking advantage of the SEARCH Program.

The bill states that only the following types of credits may be earned through the SEARCH Program:

- Replacement credits needed for graduation;<sup>5</sup>

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<sup>1</sup> Recodified at s. 1002.37, F.S.

<sup>2</sup> Section 1002.37(2)(i), F.S.

<sup>3</sup> The 25 hours per week maximum articulated in this bill is the same as the 1.00 FTE maximum for grades 4-12, and consists of 900 hours of instruction per 180 day school year.

<sup>4</sup> The seven current school district franchises are: Brevard, Broward, Dade, Hillsborough, Okaloosa, Pasco, and Polk.

<sup>5</sup> A "replacement credit" is a credit for a class that a student did not receive a passing grade. The student may use the SEARCH Program to retake the class and earn the credit if it is needed for graduation.

- Honors credits;
- Other course credit that would not otherwise be available to the student at their regular public school;<sup>6</sup>
- Credits for classes taken to help students scoring in the lower levels on the FCAT;
- Credits for classes taken by homebound students; and
- Credits for classes taken by students currently assigned to a Department of Juvenile Justice facility.

This bill limits the number of credits that an individual student may earn in the SEARCH Program to two. It also states that a school district's portion of the program funds may not exceed the district's portion of the total unweighted full-time equivalent (FTE) students enrolled in grades 9 through 12 in the participating school districts. This would help ensure that each of the districts could participate in proportion to their size.

#### C. SECTION DIRECTORY:

Section 1: Amends s. 1002.37, F.S., relating to the FLVS; creates the Students Earning Additional Recovery Credits and Honors (SEARCH) Program within the Florida Virtual School; provides for funding for the SEARCH Program; provides eligibility requirements for school district franchises; lists the types of credits which may be earned through the SEARCH program; limits funding to two credits per student; limits the total funding a school district franchise may receive through the SEARCH Program.

Section 2: Provides an effective date.

### II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

#### A. FISCAL IMPACT ON STATE GOVERNMENT:

##### 1. Revenues:

The bill does not appear to impact state government revenues.

##### 2. Expenditures:

See FISCAL COMMENTS section.

#### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

##### 1. Revenues:

The bill does not appear to impact local government revenues.

##### 2. Expenditures:

The bill does not appear to impact local government expenditures.

#### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

<sup>6</sup> "Other course [credit] that would not otherwise be available to a student" means credit for advanced courses that a student may need to get into a particular program in college or other honors or advanced placement courses that are not available in their regular public school. It does not refer to other types of elective courses which are not part of a student's work toward a particular educational program or pathway.

#### **D. FISCAL COMMENTS:**

The demand for the SEARCH Program and the cost to fully fund the program is indeterminate. The fiscal impact of this bill will be determined by the appropriation in the GAA. If the program were expanded to include all FLVS franchises and fully funded, the potential exists for the program to cost an additional \$10 to \$20 million.

The 1999 Legislature combined three funding streams to create the Supplemental Academic Instructional (SAI) Categorical for the purpose of providing district flexibility in the delivery of remedial, tutorial, drop out prevention, credit recovery and replacement courses, and other courses during the school year as well as during the summer. The funding streams were FTE funding for grades 9-12 summer school and dropout prevention programs, and the K-8 Summer School Categorical. To the extent that students enroll in replacement credits and remedial courses through the FLVS franchises, the courses are currently funded through the SAI. All school districts offer remedial and tutoring programs and many offer an optional seven period day. School districts currently receive funding for these programs through the SAI Categorical and discretionary FEFP funds.

District eligibility for participation in the SEARCH Program is limited to the seven districts that were FLVS franchises in the 2003-04 and 2005-06 fiscal years (Brevard, Broward, Dade, Hillsborough, Okaloosa, Pasco, and Polk). Citrus and Marion are first year FLVS franchises in the 2005-06 fiscal year. Collier, Flagler, and Osceola will be first year FLVS franchises in the 2006-07 fiscal year. These five districts were not franchises in the 2004-05 and 2005-06 fiscal years; therefore, they are excluded from participating in the SEARCH Program.

### **III. COMMENTS**

#### **A. CONSTITUTIONAL ISSUES:**

##### **1. Applicability of Municipality/County Mandates Provision:**

This bill does not require counties or municipalities to expend funds.

This bill does not reduce the authority of counties or municipalities to raise revenues.

This bill does not reduce the percentage of a state tax shared with cities and counties.

##### **2. Other:**

None.

#### **B. RULE-MAKING AUTHORITY:**

None.

#### **C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

### **IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES**

HB 665

2006

A bill to be entitled

An act relating to the Florida Virtual School; amending s. 1002.37, F.S.; establishing the Students Earning Additional Recovery Credits and Honors (SEARCH) Program to provide opportunities for students to recover credits needed for graduation or to earn honors course credit or other course credit; providing for payment for additional full-time equivalent student credit to the extent funded in the General Appropriations Act; providing eligibility requirements for participation by a school district operating a virtual school that is an approved franchise of the Florida Virtual School; providing for use of funds; providing a limitation on school district funding; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsections (5), (6), and (7) of section 1002.37, Florida Statutes, are renumbered as subsections (6), (7), and (8), respectively, and a new subsection (5) is added to that section to read:

1002.37 The Florida Virtual School.--

(5)(a) There is established the Students Earning Additional Recovery Credits and Honors (SEARCH) Program to provide additional opportunities for students to recover credits needed for graduation or to earn honors course credit or other course credit.

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(b) To the extent funded in the General Appropriations Act, the SEARCH Program shall pay for full-time equivalent student credit in addition to credit funded by the Florida Education Finance Program under subsections (3) and (4).

(c) School districts operating a virtual school that is an approved franchise of the Florida Virtual School as described in subsection (4) and that operated the franchise for the 2004-2005 and 2005-2006 fiscal years shall be eligible in the 2006-2007 fiscal year and thereafter to participate in the SEARCH Program.

(d) SEARCH Program funds earned by students enrolled in Florida Virtual School franchises as described in subsection (4) may only be used to pay for credits earned in excess of the 25 hours per week funded by the Florida Education Finance Program to:

1. Replace credits needed for graduation;
2. Earn credits in an honors level course or other course that would not be otherwise available to the student;
3. Serve students scoring at Level 1 or Level 2 on any subject tested on the FCAT;
4. Serve homebound students; or
5. Serve students currently assigned to a Department of Juvenile Justice facility.

(e) A student may not earn funding for more than two credits in the SEARCH Program.

(f) A school district's portion of the SEARCH Program funds may not exceed the district's portion of the total unweighted full-time equivalent students enrolled in grades 9 through 12 in the participating school districts.

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56        Section 2.   This act shall take effect July 1, 2006.

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## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 1373 CS

Supplemental Educational Services

**SPONSOR(S):** Attkisson

**TIED BILLS:**

**IDEN./SIM. BILLS:** SB 2616

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) PreK-12 Committee	9 Y, 0 N, w/CS	Beagle	Mizereck
2) Education Appropriations Committee	16 Y, 0 N	Eggers	Hamon
3) Education Council		Beagle <i>GB</i>	Cobb <i>cc</i>
4) _____	_____	_____	_____
5) _____	_____	_____	_____

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### SUMMARY ANALYSIS

The No Child Left Behind Act of 2001 (NCLB) authorizes the use of federal funds to provide supplemental educational services (SES) to low income children attending low performing schools. States are required to adopt standards governing the provision of SES to eligible students. Currently, there are no provisions in Florida law establishing state standards for SES services.

The bill establishes statewide standards governing the provision of SES and prescribes certain responsibilities to the Department of Education (DOE), local education agencies (LEA), SES providers, and parents.

The bill sets an effective date of July 1, 2006.

This bill does not have a fiscal impact. See Fiscal Comments.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

**Safeguard Individual Liberty:** The bill requires the Department of Education and school districts to take certain measures to increase access to supplemental educational services.

**Empower Families:** The bill increases opportunities for parents to enroll their child in supplemental education services. The bill establishes standards for supplemental educational services providers.

#### B. EFFECT OF PROPOSED CHANGES:

##### Present Situation:

NCLB authorizes the use of federal funds to provide SES to low income children attending low performing schools. SES may include tutoring, additional instruction, or other services provided outside of the regular school day in reading, language arts, or mathematics.<sup>1</sup>

Generally, a student is eligible for SES if the student meets school district established criteria for low income status and is attending a school subject to restructuring or corrective action or in its second year of school improvement.<sup>2</sup> NCLB requires state education agencies (SEA) to take certain measures to promote provider participation in the provision of SES.<sup>3</sup> Each SEA must also follow federally established criteria in establishing state standards for approving providers. Each SEA must maintain and disseminate to school districts a list of the approved providers available in each school district.

School districts are required by NCLB to promptly inform parents that the school their child is attending is in need of improvement.<sup>4</sup> In addition, school districts must provide parents a list of state-approved providers.<sup>5</sup> Parents may utilize approved programs conducted by a non-profit entity, a for-profit entity, LEA, an educational service agency, a public school, a public charter school, or a private school.<sup>6</sup>

Currently, there are no provisions in Florida law establishing state standards for SES services.

##### Effect of Proposed Changes:

House bill 1373 establishes statewide standards governing the provision of SES and prescribes certain responsibilities to the DOE, LEA, SES providers, and parents. Many of these requirements are already in federal law and some build on current requirements of federal law.

##### Department of Education Responsibilities:

- Identify, notify, promote participation, and approve potential providers.
- Develop pre- and post-assessments to identify and target instruction to student needs and monitor the effectiveness of services.
- Maintain a statewide and regional list of approved providers, and make lists available to school districts.
- Develop standards for monitoring quality and effectiveness of provider services.
- Ensure that LEAs have met obligations to parents.
- Notify LEAs of specific schools that are subject to restructuring or corrective action or in the second year of school improvement.

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<sup>1</sup> 34 C.F.R. § 200.45.

<sup>2</sup> U.S. Department of Education, Supplemental Education Services: Quick Reference for Parents, available at <http://www.ed.gov/parents/academic/help/supplemental-services.html> (Accessed Mar. 16, 2006).

<sup>3</sup> Id.

<sup>4</sup> 34 C.F.R. § 200.37.

<sup>5</sup> 34 C.F.R. § 200.46.

<sup>6</sup> 34 C.F.R. § 200.47.

- Post a downloadable enrollment application on the DOE website.
- Convene an advisory council to assist DOE in developing regulations to guide the selection and oversight of SES providers.

Local Education Agency Responsibilities:

- Provide recurrent notification to parents of eligible students about the availability of SES.
- Assist parents in obtaining and registering for services.
- Determine per-student funding based on federal law limits.
- Follow prescribed procedures for agreements with SES providers.
- Approve providers in a fair and transparent manner and establish procedures for monitoring provider quality and performance.

Provider Responsibilities:

- Set and target instruction to student achievement goals.
- Establish and explain procedures for monitoring progress and notifying parents and classroom instructors of student progress.
- Ensure that all instruction is secular, neutral, and nonideological.

Parent Responsibilities:

- Request services and select a provider.
- Provide transportation to the student when not otherwise provided by the provider.
- Work with providers to set student goals and maintain open communication with the provider.

In addition, the bill establishes eligibility criteria that SES providers must meet to gain state approval and requires the DOE to establish a system for conducting annual evaluations of all SES providers. The bill establishes a complaint process for parents, students, LEAs, and SES providers for determining whether the DOE and LEAs are in compliance with applicable laws and regulations governing SES.

The bill authorizes the DOE to withhold Title I funds from LEAs that fail to provide SES to eligible students.

**C. SECTION DIRECTORY:**

Section 1. Creates an unnumbered section of law governing the provision of SES.

Section 2. Provides an effective date of July 1, 2006.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

This bill does not appear to have a fiscal impact on state government revenues.

2. Expenditures:

This bill does not appear to have a fiscal impact on state government expenditures.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

This bill does not appear to have a fiscal impact on local government revenues.

2. Expenditures:

This bill does not appear to have a fiscal impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill requires the DOE and LEAs to take certain measures to notify parents of eligible students of the availability of supplemental educational services. Private providers approved by DOE may experience an increase in demand for their services.

D. FISCAL COMMENTS:

NCLB requires school districts with schools subject to restructuring or corrective action or in the second year of school improvement to set aside 20% of their Title I funds to pay for SES. The bill requires LEAs to establish per student funding amounts and take certain measures to increase the availability of SES to eligible students. The increased demand for SES that is likely to occur will result in greater expenditures of Title I funds within the 20% set aside for providing SES.

The bill prohibits school districts from using leftover SES funds for other Title I purposes unless the district ensures that a minimum of 50% of eligible students are being served. School districts are required to take additional measures to notify, enroll, and serve SES students and must also obtain a documented denial of services from each parent who does not enroll their student in SES. School districts that fall short of the 50% enrollment criteria despite reasonable efforts to comply with these measures may request authorization from the DOE to redesignate unused SES funds for other Title I purposes.

The bill allows the DOE to withhold Title I funds from school districts that fail to meet certain obligations pertaining to SES services.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because the bill does not require a city or county to spend funds or to take any action requiring the expenditure of funds; reduce authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On March 21, 2006, the PreK-12 Committee adopted two amendments to the bill.

The first amendment provides a procedure for LEAs to redesignate unused SES funds for other Title I purposes. The second amendment establishes an advisory council to assist DOE in developing regulations to guide the selection and oversight of SES providers.

This bill analysis reflects the bill as amended.

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CHAMBER ACTION

The PreK-12 Committee recommends the following:

**Council/Committee Substitute**

Remove the entire bill and insert:

A bill to be entitled

An act relating to supplemental educational services;  
providing for student access to and provider  
accountability for supplemental educational services in  
Title I schools; providing definitions; providing  
responsibilities of the Department of Education, local  
educational agencies, providers of supplemental  
educational services, and parents to provide additional  
academic instruction designed to increase the academic  
achievement of eligible students; providing criteria that  
must be met by a provider approved by the department;  
providing for department monitoring and evaluation of  
provider performance; providing a complaint process for  
determination of provider and local educational agency  
compliance with law; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

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23        Section 1. Supplemental educational services in Title I  
24 schools; student access and provider accountability.--

25        (1) DEFINITIONS.--As used in this section:

26        (a) "Adequate yearly progress" or "AYP" means performance  
27 based on a series of performance goals that each school, each  
28 local educational agency, and the state must achieve within  
29 specified timeframes in order to meet the 100-percent  
30 proficiency goal established by the federal No Child Left Behind  
31 Act of 2001.

32        (b) "Eligible student" means a student from a low-income  
33 family who attends a Title I school in the school's second year  
34 of school improvement, corrective action, or restructuring, as  
35 defined by the No Child Left Behind Act of 2001.

36        (c) "Instructor" or "tutor" means a person employed by a  
37 supplemental educational service provider to deliver instruction  
38 in reading, language arts, or mathematics to eligible students  
39 enrolled in the provider's program.

40        (d) "Local educational agency" or "LEA" means a local  
41 board of education.

42        (e) "No Child Left Behind Act of 2001" or "NCLB" is a  
43 reauthorization of the Elementary and Secondary Education Act of  
44 1965, which is the principal federal law affecting education  
45 from kindergarten through high school. The NCLB is designed to  
46 improve student achievement and close achievement gaps. States  
47 are required to develop challenging academic standards, educate  
48 all students to 100-percent proficiency by 2014, and create and  
49 implement a single, statewide accountability system.

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(f) "Parent" means the person or persons legally responsible for the guardianship of the student, including a legal guardian.

(g) "Supplemental educational service providers" or "SES providers" are faith-based organizations, for-profit and nonprofit businesses, local educational agencies, schools, institutes of higher education, community groups, and regional educational service agencies approved by the Department of Education to provide additional academic instruction designed to increase the academic achievement of eligible Title I students.

(h) "Supplemental educational services" or "SES" means additional academic instruction provided outside the regular school day that is designed to increase the academic achievement of low-income students, as defined by eligibility for free or reduced-price meals, who attend qualifying schools as defined by the No Child Left Behind Act of 2001.

(i) "Title I" is the Elementary and Secondary Education Act of 1965 program that focuses on improving the academic achievement of disadvantaged students by ensuring that all students have a fair, equal, and significant opportunity to obtain a high-quality education and reach, at a minimum, proficiency on challenging state academic standards and assessments.

(2) REQUIREMENTS.--

(a) State responsibilities.--The Department of Education shall:

1. Consult with parents, teachers, school districts, and interested members of the public to identify a large number of

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78 SES providers so that parents have a wide variety of high-  
79 quality choices.

80 2. Provide and disseminate broadly an annual notice to  
81 potential providers outlining the process for obtaining approval  
82 to be an SES provider. There shall be at least two opportunities  
83 each year for potential providers to submit their applications  
84 to the department.

85 3. Develop and apply objective criteria for approving  
86 potential providers. Each provider's SES program shall:

87 a. Include an appropriate, diagnostic assessment for use  
88 in identifying a student's weaknesses and achievement gaps upon  
89 which to build an individual student learning plan and learning  
90 goals.

91 b. Use targeted remediation or instruction that is aimed  
92 at addressing a student's skill gaps revealed during the  
93 assessment and that is based upon an individual student learning  
94 plan.

95 c. Include a post assessment linked to the diagnostic  
96 assessment to determine whether student learning gains occurred  
97 and to further develop a plan for either reteaching skills or  
98 identifying new skills for instruction.

99 d. Align with the Sunshine State Standards in the area of  
100 reading or mathematics, or both.

101 e. Supplement the academic program a student experiences  
102 in the regular school day.

103 f. Use high-quality, research-based instructional  
104 practices that are specifically designed to increase students'  
105 academic achievement.



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- 106        4. Maintain an updated list of approved providers.
- 107        5. Exercise authority to investigate and remove providers  
108 from the approved list based on evaluation results.
- 109        6. Make available to school districts a list of available  
110 approved providers in their general geographic locations.
- 111        7. Develop, implement, and publicly report on monitoring  
112 standards for providers to ensure the quality and effectiveness  
113 of services offered by approved providers.
- 114        8. Ensure that an LEA has fully met parental demands for  
115 SES. In determining whether an LEA has fully met parental  
116 demands for SES, the department shall consider whether an LEA  
117 has:
  - 118            a. Appropriately notified all eligible parents of the  
119 availability of SES.
  - 120            b. Adequately publicized options to parents through  
121 multiple forums in understandable formats and languages.
  - 122            c. Offered parents a reasonable period of time to  
123 investigate their options and submit their requests for SES.
- 124        9. No later than May 1 each year, notify LEAs of the  
125 specific schools that are in the second year of school  
126 improvement, corrective action, or restructuring and have not  
127 achieved AYP since such identification.
- 128        10. Place on its Internet website a standard, downloadable  
129 enrollment application to be used by parents of eligible  
130 students, which must be used by all LEAs for SES enrollment  
131 purposes.
- 132        11. Convene an advisory committee to assist it in  
133 developing regulations to guide the selection and oversight of

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SES providers. These regulations shall be designed in order to  
ensure that qualified providers utilize sound practices, provide  
financial accountability, and utilize recommended or sufficient  
metrics to best gauge provider effectiveness, such as  
effectiveness in raising student achievement. The committee  
shall include:

a. Two members appointed by the Speaker of the House of  
Representatives.

b. Two members appointed by the President of the Senate.

c. Two district school board members appointed by the  
Governor.

d. Parents appointed by the Governor.

e. Seven providers representing the different types of  
providers in the SES field, such as on-line providers and small  
and large for-profit, nonprofit, community-based, district-  
based, and faith-based providers, appointed by the Governor.

The Commissioner of Education or his or her designee shall chair  
the committee and submit for approval a proposal to the  
Legislature no later than the end of the 2007 legislative  
session.

(b) LEA responsibilities.--An LEA shall:

1. No later than 90 days prior to the start of the school  
year, notify parents of eligible students about the availability  
of SES. Notification shall meet the following criteria:

a. Be sent at least twice annually.

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b. Be provided in an understandable and uniform format and, to the extent practicable, in a language the parents can understand.

c. Describe how parents may obtain services.

d. Provide a minimum of 20 school days for parents to select and notify the LEA regarding a selected provider.

e. Create a streamlined, one-step SES parent registration and provider selection process that is user friendly.

2. Help parents choose a provider, if such assistance is requested, making sure that such assistance is unbiased and does not provide advantage for one provider over another, including the LEA if such LEA is an approved provider, and obtain permission from parents to release assessment data to a selected provider.

3. Determine and prioritize students who shall receive services if not all students can be served. Determination shall be made in accordance with eligibility criteria established in federal law and with guidance from the United States Department of Education, ensuring that prioritization does not take place in advance of actual demand being documented and shall be based on the 20-percent set-aside minus any actual costs associated with providing transportation for public school choice pursuant to subparagraph 18.

4. Determine the per-student spending limit according to federal law only, which amount shall not be reduced or otherwise altered.

5. Ensure that the opportunity to acquire SES is offered to eligible students on a continuous basis or, at a minimum,

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twice every school year, such as once at or near the start of the school year and once at or near the start of each new calendar year. An LEA that does not offer at least two opportunities for SES enrollment shall not amend unobligated SES into the general Title I budget.

6. Enter into an agreement with a provider selected by the parent of an eligible student no later than 45 days after the beginning of the school year or within 45 days after receiving notification of school improvement status. The same procedure shall be followed for subsequent enrollments during the school year. An LEA that does not begin to offer SES within such time periods shall not amend unobligated SES funds into the general Title I budget. The agreement shall include, at a minimum:

a. A statement of specific achievement goals for each eligible student whose parent elects to receive SES from the approved provider.

b. A description of how student progress will be measured.

c. Progress reports for each student to whom a provider gives services under the agreement.

d. Procedures for obtaining parental consent to release assessment data to a selected provider.

e. Procedures for termination of the agreement with the provider based on specific and material cause and include an opportunity for the provider to cure any such breach.

Termination for convenience clauses shall not be allowed.

f. The payment process for students receiving SES, with reimbursement for services to occur within 60 days following submission of a complete invoice.

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- 216        g. Records of attendance for each student receiving SES.
- 217        h. Security of information relating to students receiving
- 218 SES.
- 219        i. The procedure for facility access for providers, using
- 220 a fair, transparent, and objective process, to operate on site
- 221 in a school or schools identified for school improvement,
- 222 corrective action, or restructuring, free of charge or for a
- 223 reasonable fee, on the same basis and terms as are available to
- 224 other groups that seek access to the school building.
- 225        j. The process for records maintenance of a provider's SES
- 226 to students.
- 227        k. Guidelines specifying secular, neutral, and
- 228 nonideological instruction and content.
- 229        l. An outline of applicable federal, state, and local
- 230 laws, and rules and regulations required by law, in connection
- 231 with providing tutorial service.
- 232        7. Establish monitoring procedures to ensure that
- 233 providers fulfill their contractual obligations. Monitoring
- 234 should include tracking student progress toward meeting the
- 235 state's academic standards.
- 236        8. Select an approved provider or providers, using a fair,
- 237 transparent, and objective process, to operate on site in a
- 238 school or schools identified for school improvement, corrective
- 239 action, or restructuring, free of charge or for a reasonable
- 240 fee, on the same basis and terms as are available to other
- 241 groups that seek access to the school building. The LEA shall
- 242 not select a provider or providers based on a reduced per-
- 243 student amount as calculated under federal law or other criteria

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244 that would otherwise be a department responsibility or  
245 programmatic design criteria, such as the requirement of  
246 specific student-tutor ratios.

247 9. Enter into a compact with the provider, parent, and  
248 student. The compact, which shall be maintained for monitoring  
249 purposes, shall include, at a minimum:

250 a. A notification letter to the parent of a student who is  
251 eligible to receive SES from an approved provider.

252 b. Procedures regarding how the SES provider may contact  
253 schools and parents regarding available services.

254 c. Development of a collaborative relationship with the  
255 LEA to ensure that issues and concerns are handled in a timely  
256 and efficient manner.

257 d. Specific achievement goals for the student, which shall  
258 be developed in consultation with the student's parent.

259 e. An established timetable for improving the student's  
260 achievement.

261 f. Selection of a provider from the department's approved  
262 provider list.

263 g. Scheduled tutoring sessions.

264 10. Assist the department as needed in identifying  
265 potential providers within the school district.

266 11. Provide the information the department needs to  
267 monitor the quality and effectiveness of the SES offered by  
268 providers as specified in federal law.

269 12. Protect the privacy of students who receive SES. The  
270 LEA shall provide achievement data of students to providers  
271 serving those students.

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272        13. Notify parents immediately if a provider becomes  
273        ineligible to serve as an SES provider. Notification shall  
274        include the steps parents must follow in order to secure another  
275        provider.

276        14. Provide approved providers with registration forms and  
277        logistical information, including the procedures parents must  
278        follow in obtaining SES for their children.

279        15. While appealing an AYP decision, continue to provide  
280        services while the appeal is being resolved and a final AYP  
281        determination is being made. If an appeal is granted, the LEA  
282        shall continue to serve students currently receiving SES until  
283        the end of the contract period but is not obligated to provide  
284        SES to additional students.

285        16. Include in a school improvement plan steps to ensure  
286        that eligible students will receive SES as required by law  
287        whenever a school is classified as needing improvement for a  
288        second or subsequent year.

289        17. Ensure that eligible students from any school that is  
290        in the second year of school improvement, corrective action, or  
291        restructuring and has not achieved AYP at least once since such  
292        identification shall be offered SES before the start of the  
293        school year.

294        18. Set aside up to 20 percent of its Title I, Part A  
295        allocation for SES. Before determining that an amount less than  
296        20 percent of its allocation is needed for choice-related  
297        transportation and SES, an LEA shall document to the department  
298        that it has fully met demands for these services. An LEA must  
299        document, and make publicly available, that it has:

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a. Appropriately notified all parents of eligible students of the availability of public school choice and SES.

b. Adequately publicized the options to parents in understandable formats and multiple forums.

c. Offered parents a reasonable period of time to investigate their options and submit their requests for either public school choice or SES.

LEAs may redesignate unused SES funds for other Title I purposes by the May 15 consolidated application budget amendment deadline by ensuring that a minimum of 50 percent of the students eligible to receive SES are served by an approved provider. LEAs not meeting the 50-percent requirement shall submit to the department a list of eligible students, students receiving services, and otherwise eligible students on a wait list. LEAs must obtain documentation from the parents of unserved, but otherwise eligible, students that they decline to participate in SES for that school year. LEAs that are unable to meet the 50-percent requirement despite reasonable efforts to comply with these provisions may submit a request to the department for authorization to redesignate unused SES funds. Redesignation requests shall be approved if the department finds that the LEA has met the requirements of subparagraph (a)8.

(c) Provider responsibilities.--The provider shall:

1. Agree to negotiate directly with LEAs to determine scheduled sessions per student. Cost of services shall not exceed the per-student spending limit calculated by each LEA.



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327        2. Set specific achievement goals for each student, which  
328        shall be developed in consultation with each student's parent.

329        3. Provide a description of how each student's progress  
330        will be measured and how each student's parent and instructors  
331        will be regularly informed of that progress.

332        4. Establish a timetable for improving each student's  
333        achievement.

334        5. Agree not to disclose to the public the identity of any  
335        student eligible for or receiving SES without the written  
336        permission of the student's parent.

337        6. Agree to meet all applicable federal, state, and local  
338        health, safety, and civil rights laws.

339        7. Ensure that all instruction and content are secular,  
340        neutral, and nonideological.

341        8. Ensure that instruction is consistent with student  
342        achievement goals.

343        9. Agree to abide by the education industry association's  
344        current version of the SES code of ethics.

345        (d) Parent responsibilities.--The parent shall:

346        1. Request SES for the student.

347        2. Select a provider from the department's approved  
348        provider list.

349        3. Transport students to and from the place of service  
350        when not provided by the provider.

351        4. Work with the provider to set achievement goals for the  
352        student.

353        5. Maintain open communication with a provider about a  
354        student's progress.

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355        (e) Provider criteria.--  
 356        1. Providers shall meet the following criteria:  
 357        a. Have a demonstrated record of effectiveness in  
 358 improving student academic achievement.  
 359        b. Document that the instructional strategies used by the  
 360 provider are of high quality, based upon research, and designed  
 361 to increase student academic achievement.  
 362        c. Document that services are aligned with the Sunshine  
 363 State Standards in the area of reading or mathematics, or both.  
 364        d. Provide evidence that the provider is financially  
 365 sound.  
 366        e. Document that the provider will provide SES consistent  
 367 with all applicable federal, state, and local health, safety,  
 368 and civil rights laws.  
 369        f. Meet all requirements set forth in guidelines issued by  
 370 the department, including, but not limited to, reporting  
 371 requirements, application requirements, deadlines, timelines,  
 372 and standards.  
 373        g. Provide instruction that is secular, neutral, and  
 374 nonideological.  
 375        2. Providers applying for statewide provider status upon  
 376 request shall serve students in any LEA regardless of the  
 377 geographical location. Providers approved for statewide provider  
 378 status may be removed from the provider list if this requirement  
 379 is not met. Providers removed from the statewide list may  
 380 reapply and specify a geographical area for their service.  
 381        (f) Monitoring and evaluation.--

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382        1. The department shall monitor, at least annually, all  
383 providers currently serving students. Monitoring shall be  
384 conducted at a representative sample of the locations at which  
385 the provider serves participating students.

386        a. The department shall schedule with the provider a  
387 mutually agreeable date and time for a monitoring visit. Prior  
388 to a monitoring visit, the department shall send to the  
389 provider, in writing, confirmation of the scheduled date and  
390 time.

391        b. Prior to a monitoring visit, the department shall  
392 notify the provider of all documentation necessary to  
393 demonstrate compliance with all applicable state and federal  
394 laws related to SES. The provider may request technical  
395 assistance from the department in identifying the relevant  
396 documents.

397        c. A provider's performance on each monitoring standard  
398 and a provider's overall performance rating shall be indicated  
399 on the SES provider monitoring form. The department shall send  
400 to the provider, in a timely manner, a copy of the completed  
401 monitoring form that includes notes regarding items of  
402 documentation that are missing or incomplete.

403        2. The department shall develop specific procedures to  
404 annually evaluate all providers that have served students for 2  
405 or more consecutive years in reading, language arts, or  
406 mathematics. These procedures shall:

407        a. Account for, and be fair to, providers that serve both  
408 large and small populations of students and that use varying  
409 methods of instruction.

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b. Be fair and sensitive enough to record gains of individual students, especially students whose achievement level is several grades behind grade level.

c. Isolate the effects of SES from other variables that might affect a student's achievement using regression analysis, comparison groups, or other valid and reliable statistical means.

d. Collect qualitative data on parental satisfaction with provider services.

e. Include safeguards against potential conflicts of interests when the LEA is also an approved provider and is involved in provider monitoring and evaluation.

3. If the department determines that a provider has failed to contribute to increasing the academic proficiency of students for 2 or more consecutive years in reading, language arts, or mathematics in a specific LEA, the department shall remove the provider from the approved provider list for that LEA.

4. The provider shall have the opportunity to appeal the department's decision to the State Board of Education. The provider may reapply to the department for approval after a 1-year waiting period.

5. The department shall require an LEA to submit:

a. The parental notification letters the LEA has developed and utilized to inform parents of eligible students.

b. At least twice during the school year, updated information on how many students in the LEA are eligible for SES and how many students make use of SES.

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c. How much money, in total dollars and per student, is being spent by the LEA on SES.

(g) Complaint process.--

1. The department shall monitor complaints from parents, students, SES providers, school districts, and other individuals to determine whether LEAs and SES providers are in compliance with the applicable state and federal laws, rules, regulations, and guidance governing the provision of SES. The department shall annually provide a summary report to the State Board of Education.

2. An organization or individual may file with the department a signed, written complaint setting forth allegations of noncompliance. The written complaint shall include, at a minimum:

a. A clear statement of the allegation.

b. A summary of the facts upon which the allegation is based.

c. Any documentation supporting the allegation.

d. The complainant's contact information, including the name of an individual complainant or an authorized representative of the complainant organization and the address and telephone number of the individual or representative.

3. Complaints received from an organization or individual shall be signed and addressed in writing to the department.

4. The department shall acknowledge, in writing, its receipt of a complaint within 15 business days.

5. The department shall, in a timely manner, commence an investigation of the allegations set forth in the complaint and

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465 make an independent determination as to whether the allegations  
466 warrant further review or action.

467 6. If necessary, the department may conduct an onsite  
468 visit to clarify any issues raised by the complaint. An onsite  
469 investigation team may examine relevant records and conduct  
470 interviews of relevant persons to determine whether there has  
471 been a violation of any applicable state or federal law, rule,  
472 regulation, or guideline.

473 7. The department shall send written notification to all  
474 appropriate parties of the steps necessary to resolve the  
475 complaint, including technical assistance activities,  
476 negotiations, and corrective actions to achieve compliance. This  
477 notification may include specific requirements and timelines  
478 that must be met in order to ensure that providers other than  
479 LEAs continue to receive SES funds from the LEA. LEAs that are  
480 providers shall meet the requirements in order to ensure that  
481 funds equal to the amount of their SES set-aside are available  
482 in the department's grants accounting system.

483 8. Upon conclusion of the department's investigation, the  
484 department shall take appropriate action to remedy violations of  
485 applicable laws, rules, regulations, or guidelines, including  
486 removal of a provider from the approved provider list.

487 9. If the department makes the decision to remove a  
488 provider from the approved provider list, the LEA shall be  
489 notified no later than 10 business days after the department's  
490 action. Each provider notified of the decision shall have the  
491 right to appeal such decision prior to its becoming final.

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492        10. If an LEA does not comply with providing SES to  
493 eligible students within the established timeframe, the  
494 department shall withhold funds equal to the amount of the LEA's  
495 SES set-aside funds until the LEA complies.

496        11. If funds are withheld from an LEA for not providing  
497 SES to eligible students within the specified timeframe, the  
498 department may enter into agreements with providers in lieu of  
499 the LEA.

500        Section 2. This act shall take effect July 1, 2006.







## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HJR 1573 CS  
**SPONSOR(S):** Rubio and others  
**TIED BILLS:**

Equal Opportunity to Obtain a High Quality Education

**IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Choice & Innovation Committee	7 Y, 0 N, w/CS	Hassell	Kooi
2) Education Appropriations Committee	15 Y, 3 N, w/CS	Hamon	Hamon
3) Education Council		Hassell 	Cobb 
4)			
5)			

### SUMMARY ANALYSIS

This joint resolution proposes to create a new section in Article IX of the Florida Constitution relating to education. The joint resolution states that every child deserves an equal opportunity to obtain a high quality education and would apply to education programs for students in prekindergarten through college. It also clarifies that the joint resolution does not establish a right to an education program not provided by law.

The joint resolution would require that for kindergarten through grade 12, school districts must spend at least 65 percent of school funds on classroom instruction instead of administration. The joint resolution would also authorize the Legislature to create and expend public funds on education programs, regardless of whether some of those funds are directed to non-public providers or to participants that are religiously affiliated.

This joint resolution creates section 8, Article IX, of the Florida Constitution.

This is a joint resolution which requires passage by 3/5 vote of each chamber.

The Division of Elections with the Department of State estimates that the non-recurring cost of compliance with the publication requirements would be approximately \$50,000 in the 2006-2007 fiscal year.

If certain scholarship programs ceased to exist, the state could experience increased costs of approximately \$39.0 million in the Florida Education Finance Program (FEFP). See FISCAL COMMENTS.

If the joint resolution is passed in the 2006 Legislative session, the proposed amendment would be placed before the electorate at the 2006 general election, and if adopted will take effect January 2, 2007.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

*Provide limited government* – The joint resolution would authorize enhanced options for an equal opportunity to obtain a high quality education for every child from prekindergarten through college, as provided by law.

*Safeguard individual liberty*- The joint resolution would authorize enhanced options for an equal opportunity to obtain a high quality education for every child from prekindergarten through college, as provided by law.

*Empower families*- The joint resolution would authorize enhanced options for an equal opportunity to obtain a high quality education for every child from prekindergarten through college, as provided by law.

#### B. EFFECT OF PROPOSED CHANGES:

### CONSTITUTIONAL AMENDMENT

#### Background

##### *Florida's Free Public Schools Provision*

As revised in 1998, Article IX, section 1(a) of the Florida Constitution states in pertinent part:

The education of children is a fundamental value of the people of the State of Florida. It is, therefore, a paramount duty of the state to make adequate provision for the education of all children residing within its borders. Adequate provision shall be made by law for a uniform, efficient, safe, secure, and high quality system of free public schools that allows students to obtain a high quality education and for the establishment, maintenance, and operation of institutions of higher learning and other public education programs that the needs of the people may require.

The revisions made to article IX, section 1, affirmed the understanding that education is and will continue to be a “fundamental value” and “a paramount duty of the state.” The sole purpose of the Constitution Revision Commission’s revision to article IX was “to increase the state’s constitutional duty by raising the constitutional standard for adequate education, making the standard high quality.”<sup>1</sup> There was no mention, at the time, of an intent to make public schools the exclusive manner by which the Legislature could make provision for educating children. In fact, a proposal to preclude educational vouchers was presented to the Commission by the public, but never accepted.<sup>2</sup>

##### *Opportunity Scholarship Program*

Following the Constitutional revision of 1998, the Legislature enacted the Opportunity Scholarship Program (OSP) as part of the A+ Education Plan in 1999,<sup>3</sup> based on a finding that a public school student should not be compelled to remain in a school deemed by the state to be failing for a minimum

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<sup>1</sup> Jon Mills and Timothy McLendon, *Setting a New Standard for Public Education: Revision 6 Increases the Duty of the State to Make “Adequate Provision” for Florida Schools*, 52 Fla. L. Rev. 329, 331 (2000).

<sup>2</sup> *Id.*

<sup>3</sup> ch. 99-398, Laws of Fla.

of two years during a four-year period.<sup>4</sup> The OSP was designed to provide the parents of a student attending, or assigned to attend, a failing school with the opportunity to send their child to a satisfactorily performing public school, or to an *eligible* private school of their choice. The program also provides students entering kindergarten or the first grade of a failing school with the same opportunity to choose an alternate public or private school.<sup>5</sup>

All private schools have the option to participate in the OSP so long as the schools meet the criteria set forth in statute and have registered to participate with the Department of Education (DOE).<sup>6</sup> The DOE is responsible for verifying the student's initial admission acceptance and continued enrollment and attendance in the chosen private school. After DOE provides proper documentation, the Chief Financial Officer makes four equal installments, known as warrants, payable to the student's parent. The warrant is mailed by the DOE to the chosen private school and the student's parent is then required to restrictively endorse the warrants to the private school for receipt of the OSP funds.<sup>7</sup>

Participation of students and private schools has steadily increased as additional public schools have been deemed failing.<sup>8</sup> Currently, there are 733 students attending 53 private schools. Of the private schools participating in the OSP, 71.7 percent are sectarian, and 55.3 percent of the OSP students utilizing opportunity scholarships are attending those sectarian schools. The majority of private schools accepting OSP students have fewer than 10 students utilizing opportunity scholarships.<sup>9</sup> There are a few private schools in the Miami-Dade and Palm Beach County school districts, however, with larger numbers of scholarship students.

### *Bush v. Holmes I*

The OSP has been the subject of a constitutional challenge since it was implemented in 1999. In 2000, the trial court held that OSP violates the free public schools provision of article IX, section 1, of the state Constitution.<sup>10</sup> On appeal, however, the First District Court of Appeal reversed the lower court's ruling and found that "nothing in article IX, section 1 clearly prohibits the Legislature from allowing the well-delineated use of public funds for private school education, particularly in circumstances where the Legislature finds such use necessary."<sup>11</sup> The appellate court declined to address the other constitutional issues raised, and remanded the case to the trial court for further proceedings.<sup>12</sup> The Florida Supreme Court denied discretionary review.<sup>13</sup>

### *Bush v. Holmes II - First DCA opinion*

The trial court, on remand, held that OSP violated the no-aid provision of article I, section 3 of the Florida Constitution.<sup>14</sup> Article 1, section 3 of the Florida Constitution states in pertinent part:

No revenue of the state or any political subdivision or agency thereof shall ever be taken from the public treasury directly or indirectly in aid of any church, sect,

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<sup>4</sup> Section 1002.38(1), F.S., provides that a failing school is a school that has received grade of "F" for two years in a four-year period.

<sup>5</sup> Section 1002.38(2) F.S., provides for student eligibility.

<sup>6</sup> Section 1002.38(4), F.S., provides eligibility requirements.

<sup>7</sup> Section 1002.38(6), F.S., provides methodology for funding and payment.

<sup>8</sup> Preliminary numbers for the 2005-2006 school year, however, show that there are 30 fewer students attending private schools on opportunity scholarships than the previous year.

<sup>9</sup> Based upon numbers provided by the Department of Education (DOE) for September 2005 voucher payments.

<sup>10</sup> *Bush v. Holmes et al.*, 767 So. 2d 668, 674 (Fla. 1<sup>st</sup> DCA 2000). The trial court applied the canon of construction *expression unius est exclusion alterius*.

<sup>11</sup> *Id.* at 675.

<sup>12</sup> *Id.* at 677.

<sup>13</sup> See *Holmes v. Bush*, 790 So. 2d 1104 (Fla. 2001).

<sup>14</sup> *Bush v. Holmes*, 886 So. 2d 345 (Fla. 1<sup>st</sup> DCA 2004) (hereinafter *Holmes II*). The plaintiffs voluntarily dismissed their claims under the federal Establishment Clause and the school fund provision of Article IX, section 6, of the Florida constitution.

or religious denomination or in aid of any sectarian institution.

While the case was pending on remand, the U.S. Supreme Court upheld a program similar to the OSP. In *Zelman v. Simmons-Harris*, the Court held that the Ohio Pilot Project Scholarship Program was constitutional under the federal Establishment Clause.<sup>15</sup> The federal clause provides that “Congress shall make no law respecting an establishment of religion....”<sup>16</sup> Subsequently, the challengers to the OSP voluntarily dismissed their claims under the federal Establishment Clause and “the school fund provision” of the Florida Constitution.<sup>17</sup> The only remaining issue for the trial court to decide was whether the OSP violated the no-aid provision of the Florida Constitution.<sup>18</sup>

On appeal, a divided en banc panel of the First District Court of Appeal upheld the trial court’s ruling that the OSP violates article I, section 3, of the Florida Constitution.<sup>19</sup> In so holding, the Court cited concerns over the fact that state revenues were being used to fund the scholarships, that the “direct or indirect” language in the constitution was a broad prohibition on the use of state revenues, and that the prohibition included many of the schools receiving the scholarships due to their religious affiliation.<sup>20</sup> The appellate court certified to the Florida Supreme Court the following question: “Does the Florida Opportunity Scholarship Program, section 229.0537, Florida Statutes (1999), violate article I, section 3 [the no-aid provision] of the Florida Constitution?”<sup>21</sup>

As noted above, the no-aid provision was the only constitutional ground upon which the trial and district courts based their opinions when *Bush v. Holmes* was heard a second time. Because the U.S. Supreme Court in *Zelman* held that a program similar to the OSP does not violate the federal Establishment Clause, the district court’s majority opinion concentrated on how Florida’s no-aid provision is more restrictive than the federal clause. The district court held that while the first sentence of Florida’s provision is synonymous with the federal clause, the additional language of the state’s no-aid provision expands restrictions on aid to religion by specifically prohibiting the expenditure of public funds “directly or indirectly” to aid sectarian institutions.<sup>22</sup>

The district court invalidated the OSP to the extent that it authorizes state funds to eventually reach sectarian schools.<sup>23</sup> The court went on to invalidate the entire statute because it could not find that the Legislature would have intended for provisions of the statute to be severable or that the Legislature would have adopted the OSP without the intent that vouchers would be used at private sectarian schools.<sup>24</sup>

#### *Bush v. Holmes II – Supreme Court majority opinion*

After granting certification, the court held that the OSP violates the free public school provision’s requirement that adequate provision be made for a “uniform, efficient, safe, secure, and high quality system of free public schools.”<sup>25</sup> The court found that the provision acted as a “limitation on the

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<sup>15</sup> See 536 U.S. 639 (2002). The Ohio program allowed parents of Cleveland schoolchildren to receive a tuition voucher redeemable either in participating Cleveland private schools or public schools in adjacent districts.

<sup>16</sup> U.S. CONST. amend I.

<sup>17</sup> Article IX, section 6, Fla Const.

<sup>18</sup> *Holmes II*, 886 So. 2d at 345.

<sup>19</sup> *Id.* at 340.

<sup>20</sup> *Id.* at 352-354.

<sup>21</sup> *Id.* at 367. Judge Benton wrote the majority opinion which was joined by seven other judges. He also wrote a separate opinion finding that OSP violated article 9, section 1, which was joined by only four out of the fourteen judges on the panel. Section 229.0537 F.S., cited by the court, was renumbered as a result of chapter 2002-387, Laws of Florida, and is now Section 1002.38, F.S.

<sup>22</sup> *Id.* at 344.

<sup>23</sup> *Id.* at 352.

<sup>24</sup> *Id.* at 346, FN 4. In an opinion concurring in part and dissenting in part, Judge Wolf would have upheld the provision allowing students to utilize vouchers at non-sectarian private schools (*id.* at 371).

<sup>25</sup> *Holmes v. Bush*, 919 So. 2d at 410. The court also noted that article IX, section 6, or the state school fund provision, limiting disbursement of funds to the “support and maintenance of free public schools,” reinforced its opinion invalidating the OSP.

Legislature's power because it provides both a mandate to provide for children's education and a restriction on the execution of that mandate."<sup>26</sup> The court reasoned that the sentences comprising the free public schools provision must be read together.<sup>27</sup> The sentence mandating that "adequate provision" for public education be made must be read in conjunction with the successive sentence prescribing the manner for carrying out that mandate. Following the first trial court's reasoning, the Supreme Court found that the two sentences read together create an implied prohibition against the Legislature providing state funds for any means of education other than the public school system.<sup>28</sup>

Applying the doctrine of *expressio unius est exclusio alterius*, meaning the expression or inclusion of one thing implies the exclusion of alternatives, the Court read the constitutional directive to the state to provide for a "uniform, efficient, safe, secure, and high quality system of free public schools..." to prohibit any other program in addition to the uniform system of free public schools that is currently provided.<sup>29</sup>

The court also expressed concern that the private schools that students attend on opportunity scholarships are "not subject to the *uniformity* requirements of the public school system," mentioned in the constitution.<sup>30</sup> Though OSP students must take statewide assessment tests, the court noted that a private schools' curriculum and teachers are not subject to the same standards or supervision applied to public schools.<sup>31</sup> Without state regulation, the court opined, private school curriculum standards may vary greatly depending on the accrediting body.<sup>32</sup> Based upon this reasoning, the court found the alternative system of private schools receiving funding through the OSP did not meet the uniformity requirement.

The Court concluded its opinion by declining to address the no-aid provision in their opinion but stated that the Court "...neither approve[s] or disapprove[s] the First District's determination that the OSP violates the "no-aid" provision in Article 1, section 3 of the Florida Constitution...."<sup>33</sup>

#### *Bush v. Holmes II – Supreme Court dissenting opinion*

The dissent responded that the constitutional provision at issue was clear and unambiguous and that it should be given its plain and obvious meaning. Accordingly, there was no reason to resort to canons of statutory interpretation and construction in construing the intent of the provision.<sup>34</sup>

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<sup>26</sup> *Id.* at 406.

<sup>27</sup> *Id.* at 406-407 (employing the principal of statutory construction *in pari materia*, which means the provisions are to be construed together to ascertain the general meaning).

<sup>28</sup> *Id.* See *supra* note 11, at 2, for discussion of the statutory construction *expressio unius est exclusio alterius*.

<sup>29</sup> *Id.* at 406-407.

<sup>30</sup> *Id.* at 412. (emphasis added)

<sup>31</sup> *Id.* at 409-410.

<sup>32</sup> *Id.* at 410.

<sup>33</sup> *Id.* at 413.

<sup>34</sup> See *Holmes II*, 919 So. 2d 392, 420 (Bell, J. dissenting). The dissent recognized the significant expansion of the Court's authority through the use of *expressio unius* to interpret the free public schools provision and cited to the fact that courts nationwide generally agree that it is a maxim of statutory construction that should rarely, if ever, be used in construing the state constitution, and then, only with great caution. (Citing *State ex rel. Jackman v. Court of Common Pleas of Cuyahoga County*, 224 N.E. 2d 906, 910 (Ohio 1967) (recognizing that the *expressio unius* maxim should be applied with caution to constitutional provisions ... relating to the legislative branch of government, since [the maxim] cannot be made to restrict the plenary power of the legislature") (citing 16 C.J.S. *Constitutional Law* § 69 (2005) (stating "the maxim 'expressio unius est exclusio alterius' does not apply with the same force to a constitution as to a statute ..., and it should be used sparingly"); *Reale v. Bd. of Real Estate Appraisers*, 880 P.2d 1205, 1213 (Colo. 1994) (declaring that the *expressio unius* maxim is "inapt" when used to imply a limitation in a state constitution because the "powers not specifically limited [in the constitution] are presumptively retained by the people's representatives."); *Penrod v. Crowley*, 356 P.2d 73, 80 (Idaho 1960) (stating that *expressio unius* does not apply when interpreting the provisions of the state constitution.); *Baker v. Martin*, 410 S.E.2d 887, 891 (N.C. 1991) (stating that *expressio unius* has never been applied to interpret the state constitution because the maxim "flies in the face" of the principle that "[a]ll power which is not expressly limited ... in our State Constitution remains with the people, and an act of the people through their representatives in the legislature is valid unless prohibited by that Constitution.")

The dissent noted that unlike the federal constitution, the state constitution is a limitation upon the power of government rather than a grant of that power.<sup>35</sup> As such, the courts are without authority to invalidate the legislative enactment "unless it is clearly contrary to an express or necessarily implied prohibition within the constitution."<sup>36</sup>

The dissent pointed out that nothing in the text of article IX, section 1 clearly prohibits or necessarily implies the prohibition of the use of funds to provide other educational opportunities outside of the uniform system required by the provision. The text is devoid of language indicating an exclusive intent in that it does not state that "the government's provision for education shall be "by" or "through" a system of free public schools." It does require adequate provision "for" a system of free public schools which would not preclude additional programs. The dissent argued that "without language of exclusion or preclusion, there is no support for the majority's finding that public schools are the exclusive means by or through which the government may fulfill its duty to make adequate provision for the education of every child in Florida."<sup>37</sup> Consequently, the Court was without authority to declare OSP unconstitutional.<sup>38</sup>

### *Effect on Other Educational Choice Programs*

The Supreme Court's opinion invalidating the OSP provided that the ruling is to apply prospectively at the end of the current school year to avoid disrupting the education of the scholarship students.<sup>39</sup> Similar to the district court's opinion, which sought to limit its application to the OSP, the Supreme Court attempted to limit its ruling, stating that the effect of its decision on other programs would be speculation.<sup>40</sup> The Court specifically noted, however, that prekindergarten, community colleges, adult education, and general welfare programs are not implicated by this decision.<sup>41</sup>

Nevertheless, despite the tenor of the court's ruling, there are other educational programs that could still be open to challenge under *either* the Supreme Court's ruling on the free public schools provision or the district court of appeal's ruling on the no-aid provision.<sup>42</sup>

### *John M. McKay Scholarship Program*

In the 1999-2000 school year, the John M. McKay Scholarships for Students with Disabilities Program (McKay) was a pilot program in which two students chose to utilize a McKay scholarship to attend a school of their choice. Just six years later the popularity of the program has soared as 16,812 students chose to utilize a McKay scholarship in the 2005-2006 school year to attend a school of their choice.

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<sup>35</sup> *Id.* at 414, citing *Chiles v. Phelps*, 714 So.2d 453, 458 (Fla.1998) (citing *Savage v. Board of Public Instruction*, 101 Fla. 1362, 133 So. 341, 344 (1931), for the proposition that "[t]he Constitution of this state is not a grant of power to the Legislature, but a limitation only upon legislative power, and unless legislation be clearly contrary to some express or necessarily implied prohibition found in the Constitution, the courts are without authority to declare legislative [a]cts invalid" and recognizing that "[t]he legislature's power is inherent, though it may be limited by the constitution"); see also *State ex rel. Green v. Pearson*, 153 Fla. 314, 14 So.2d 565, 567 (1943) ("It is a familiarly accepted doctrine of constitutional law that the power of the Legislature is inherent.... The legislative branch looks to the Constitution not for sources of power but for limitations upon power.").

<sup>36</sup> *Id.*, citing *Chapman v. Reddick*, 41 Fla. 120, 25 So. 673, 677 (1899) ("[U]nless legislation duly passed be clearly contrary to some express or implied prohibition contained [in the constitution], the courts have no authority to pronounce it invalid.").

<sup>37</sup> *Id.* at 416.

<sup>38</sup> *Id.* at 413.

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

<sup>41</sup> *Id.* The Court found that these programs were not implicated because pre-kindergarten is addressed separately in the free public schools section and does not have a requirement that it be provided by particular means; community colleges and adult general education programs are not within the general conception of free public schools or institutions of higher learning; and many of the other private welfare programs are not affected by the constitutional provision upon which this opinion is based – article IX.

<sup>42</sup> Given that the First DCA is the only court to address the no-aid provision and its effect on a program such as OSP, it is binding statewide unless and until the Supreme Court addresses the issue. See *Stanfill v. State*, 384 So. 2d 141, 143 (Fla. 1980).

The McKay program allows parents of students with disabilities whose parent is “dissatisfied with the student’s progress” at the child’s assigned public school to choose the best academic environment for their child.<sup>43</sup> The McKay program is similarly structured to the OSP to the extent that parents of eligible students may choose from any private school, religious or non-religious, so long as the school meets the criteria set forth in statute.<sup>44</sup> Also, the manner in which McKay scholarship funds are distributed is similar to that of the OSP.<sup>45</sup>

#### *Corporate Tax Credit Scholarship Program*

The Corporate Tax Credit Scholarship Program (CTC) was established by the 2001 Legislature to provide an income tax credit for corporations that contribute money to nonprofit scholarship-funding organizations (SFO) that award scholarships to students within the state who qualify for free or reduced-price school lunches under the National School Lunch Program.<sup>46</sup> The corporations receive a dollar for dollar tax credit for these donations.

The CTC Program is similar to the OSP to the extent parents may choose any private school so long as the school meets the criteria set forth in statute.<sup>47</sup> However, there are differences in the way the CTC program is funded that may be significant with regard to potential constitutional challenges.

Unlike OSP, the CTC scholarships are funded solely through private donations. Although the donors receive a dollar for dollar tax credit for the donations, the money never becomes part of the state treasury and therefore, cannot be considered a government appropriation of funds. For example, in *Johnson v. Presbyterian Homes of Synod of Florida, Inc.*, the Florida Supreme Court held that a tax exemption for a property owned by the Presbyterian Synod of Florida “did not involve a disbursement from the public treasury.”<sup>48</sup>

Likewise, tax credits similar to those provided in the CTC program have been found not to be violative of a constitutional provision similar to the language in article I, section 3, due to the fact that they do not involve a government appropriation of funds.<sup>49</sup> Nevertheless, there is no Florida case squarely on point involving a tax credit.

In the 2005-2006 school year, 14,084 students chose to utilize a CTC scholarship to attend a school of their choice, with approximately 82% of the students choosing to attend a sectarian school.<sup>50</sup> Of the 14,084 scholarship students 41.9% are African American, 23.1% are White, non-Hispanic and 22.1% are Hispanic.<sup>51</sup>

#### *Voluntary Prekindergarten Education Program*

In 2002, the electors of Florida approved Amendment No. 8 to the state Constitution.<sup>52</sup> The Amendment required the Legislature to establish a new early childhood development and education program for every four-year-old child in the state by the 2005 school year. The 2004 Legislature created the Voluntary Prekindergarten Education Program (VPK), which allows a parent to enroll his or her child in a voluntary, free prekindergarten program offered during the year before the child is eligible for admission to kindergarten.

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<sup>43</sup> Section 1002.39(2), F.S.

<sup>44</sup> Section 1002.39(4), F.S.

<sup>45</sup> Section 1002.39(6), F. S. Approximately 47.8% of the 16,812 students chose to attend a religiously affiliated school.

<sup>46</sup> Chapter 2001-225, L.O.F.; section 220.187(2)(e), F. S., defines qualified student.

<sup>47</sup> Section 220.187(6), F. S., provides for eligible nonpublic school obligations.

<sup>48</sup> 239 So. 2d 256 (Fla. 1970).

<sup>49</sup> *Kotterman v. Killian*, 972 P. 2d 606, 612-613, 620 (Ariz. 1999).

<sup>50</sup> Florida Department of Education, Corporate Tax Credit Scholarship Program February Quarterly Report 2006.

<sup>51</sup> *Id.*

<sup>52</sup> Article IX, section 1(b), Fla. Const.

The program allows public and non-public schools that educate four year- olds to receive funding from the state. However, apart from allowing religiously affiliated providers, the eligibility criteria for program providers are dissimilar to the OSP and McKay provider requirements.<sup>53</sup> As of January 31, 2006, there are 93,681 children enrolled in the VPK program of which 13,227 children are being served by faith based providers.<sup>54</sup> While the VPK program was expressly distinguished from OSP by the Florida Supreme Court majority, it remains vulnerable under the standing First DCA opinion.

#### *Other Programs Potentially Affected*

In addition to the McKay and VPK programs, the following list of State Funded Financial Aid Programs provides an account of how many students may be affected by the First District of Appeal's reasoning in that they are attending an institution with a religious affiliation and received financial aid in the 2004-2005 fiscal year.<sup>55</sup>

- The Bright Futures Scholarship Program is a lottery-funded scholarship program created by the 1997 Legislature to reward high school graduates who merit recognition of high academic achievement and enroll in a degree program, certificate program, or applied technology program at an eligible public or private Florida postsecondary institution.<sup>56</sup> 3,647 of the 130,597 Bright Futures Scholarship recipients attended an institution with a religious affiliation.
- The Florida Residence Access Grant (FRAG) is a tuition assistance program for students registered at eligible independent, nonprofit colleges or universities in Florida.<sup>57</sup> 16,275 of the 35,502 FRAG recipients attended an institution with a religious affiliation.
- The Florida Student Assistance Grant (FSAG) Program consists of three state-funded financial assistance programs that are available to undergraduate students who demonstrate financial need.<sup>58</sup> 6,637 of the 11,896 Florida Private Student Assistance Grant (FSAG-PR) recipients and 133 of the 10,745 of the Florida Postsecondary Student Assistance Grant (FSAG-PO) recipients attended an institution with a religious affiliation.
- The Mary McLeod Bethune Scholarship (MMB) Program provides matching grants for private sources that raise money for scholarships to be awarded to students who attend Florida Agricultural and Mechanical University, Bethune-Cookman College, Edward Waters College, or Florida Memorial College.<sup>59</sup> 223 of the 262 MMB recipients attended an institution with a religious affiliation.

#### *Classroom Instruction Expenditure*

The joint resolution would require that all districts spend no less than 65 cents out of every dollar received in the classroom than on administration costs. Classroom instruction and administration shall be defined by law. According to the National Center for Education Statistics (NCES), the average percentage of such expenditures within Florida's 67 school districts during the 2003-2004 school year was 59.19%.<sup>60</sup>

#### **Effects of Proposed Changes**

The joint resolution proposes to offer to the voters of Florida a new section of Article IX of the Florida Constitution that requires school funding to be prioritized toward classroom instruction and provides the Legislature with the authority to enact and publicly fund educational programs, for the purpose of

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<sup>53</sup> Sections 1002.71 and 1002.55, F.S.

<sup>54</sup> The Agency for Workforce Innovation

<sup>55</sup> Florida Department of Education Office of Student Financial Assistance

<sup>56</sup> Sections 1009.53 and 1009.5333, F.S.

<sup>57</sup> Section 1009.89, F.S. and Rule 6A-20.007, F.A.C.

<sup>58</sup> Sections 1009.50 - 1009.52, F.S. and Rules 6A-20.031 – 6A-20.033, F.A.C.

<sup>59</sup> Section 1009.73, F.S. and Rule 6A-20.029, F.A.C.

<sup>60</sup> This figure was determined through data provided by the Florida Department of Education and has not been finalized by NCES.



providing every child in the state with the opportunity to receive a high quality education. The joint resolution also clarifies that the amendment does not establish a right to an education program not provided by law.

#### *Prioritizing Public School Funds to the Classroom*

By Constitutional mandate, the Legislature has the duty to make adequate provision for the education of all children in the state of Florida.<sup>61</sup> The joint resolution states that in order to make such adequate provision for high quality public K-12 education, school districts must spend at least 65% of their funding on classroom instruction, rather than administration.

It also provides that the Legislature will define classroom instruction and administration in statute. Accordingly, should the resolution be approved by the electors in the November 2006 election, implementing legislation would determine the details of what constitutes classroom instruction and administrative expenditures.

As a result of the resolution, school districts will be required to focus their attention on how much of their educational funds are being spent in the classroom and prioritize their use of funds so that public school funding can be targeted to areas that will produce increased student performance.

#### *Providing for Options that Include Non-Public Schools*

The joint resolution also addresses the Legislature's authority to enact and fund public or non-public prekindergarten through college educational programs that provide options that include non-public schools.

This provision clearly addresses the constitutional viability of the McKay and CTC scholarship programs under Article IX, section 1 by specifically referencing students with disabilities and those who are economically disadvantaged. It also protects the VPK program, which is available to all 4 year-old children without regard to family income or disability, by clarifying the Legislature's authority to provide choice to any child whose parents request alternatives to traditional public education programs.

The joint resolution also clarifies the Legislature's authority to provide for and fund educational programs that allow for the participation of religious and non-religious individuals and non-public providers. This provision protects the McKay, VPK, Bright Futures, FRAG, FSAG, MMB and any other programs that might involve participation by religiously affiliated providers from challenge based upon the ruling by the First District Court of Appeal regarding Article I, section 3.

The joint resolution does not absolve the Legislature from funding the system of free public schools required by the Florida Constitution.<sup>62</sup> In contrast, it simply provides that the Legislature is not limited to one particular system, nor is it required to exclude the participation of religiously affiliated providers in its efforts to meet the mandate of providing high quality education to the citizens of Florida. Consequently, the joint resolution will preserve the ability of 16,812 McKay Scholarship students, 14,084 Corporate Tax Credit Scholarship students, 13,227 Voluntary Prekindergarten students, and 26,915 postsecondary education students to attend a non-public school of their choice, as provided by law.

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<sup>61</sup> Article IX, s. 1(a), Fla. Const.

<sup>62</sup> *Id.*

## REVISION OR AMENDMENT TO THE STATE CONSTITUTION

### Background

Amendments to Florida's Constitution can be proposed by five distinct methods: 1) joint legislative resolution, 2) the Constitutional Revision Commission, 3) citizen's initiative, 4) a constitutional convention, or 5) the Taxation and Budget Reform Commission.<sup>63</sup>

Depending on the method, all proposed amendments or revisions to the Constitution must be submitted to the electors at the next general election 1) held more than ninety days after the joint resolution, 2) 180 days after the report of the Constitutional Revision Commission or Taxation Budget Reform Commission, or 3) for citizen initiatives, if all the required signatures were submitted prior to February 1 of the year in which the general election is to be held.<sup>64</sup>

Article XI, s.1, of the Florida Constitution provides for proposed changes to the Constitution originating with the Legislature:

**SECTION 1: Proposal by legislature.** – Amendment of a section or revision of one or more articles, or the whole, of this constitution may be proposed by joint resolution agreed to by three-fifths of the membership of each house of the legislature. The full text of the joint resolution and the vote of each member voting shall be entered on the journal of each house.

Once in the tenth week, and once in the sixth week immediately preceding the week in which the election is held, the proposed amendment or revision, with notice of the date of election at which it will be submitted to the electors, must be published in one newspaper of general circulation in each county in which a newspaper is published.<sup>65</sup> If the joint resolution is passed in this session, the proposed amendment would be placed before the electorate at the 2006 general election, unless it is submitted at an earlier special election pursuant to a law enacted by an affirmative vote of three-fourths of the membership of each house of the Legislature and is limited to a single amendment or revision.<sup>66</sup>

The Florida Constitution provides that if the proposed amendment or revision is approved by the vote of electors, it is effective as an amendment to or revision of the Constitution of the state on the first Tuesday after the first Monday in January following the election, or on such other date as may be specified in the amendment or revision.<sup>67</sup>

### Effects of Proposed Changes

This joint resolution proposes to create a new section of Article XI of the Florida Constitution relating to education. If the joint resolution is passed in this session, the proposed amendment would be placed before the electorate at the 2006 general election, and if adopted will take effect January 2, 2007.

### C. SECTION DIRECTORY:

The legislation is a joint resolution proposing a constitutional amendment and, therefore, does not contain bill sections.

<sup>63</sup> See Art. XI, ss. 1-4, and 6, Fla. Const.

<sup>64</sup> See Art. XI, ss 2, 5, and 6, Fla. Const.

<sup>65</sup> See Art. XI, s. 5(c), Fla. Const.

<sup>66</sup> See Art. XI, s.5(a), Fla. Const.

<sup>67</sup> See Art. XI, s.5(e), Fla. Const.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

The joint resolution does not appear to have a fiscal impact on state revenues.

#### 2. Expenditures:

##### *Revision of State Constitution*

The Division of Elections with the Department of State estimates that the non-recurring cost of compliance with the publication requirements would be approximately \$50,000 in 2006-2007 fiscal year.

##### **Non-Recurring**

**FY 2006-07**

Department of State, Division of Elections

Publication Costs

\$50,000 (General Revenue)

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

The joint resolution does not appear to have any impact on local government revenues.

#### 2. Expenditures:

The joint resolution does not appear to have any impact on local government expenditures.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

### D. FISCAL COMMENTS:

For the 2004-05 fiscal year, payments for McKay Scholarships and Opportunity Scholarships totaled \$100,167,925 and \$3,127,115, respectively for a total for both programs of \$103,295,040. The scholarship payment is the lesser of the FEFP funds generated or tuition and fees. There were some instances where tuition and fees were less than the FEFP funds, which resulted in a reversion or savings to the state of \$1.6 million in FEFP funds.

In the 2005-06 fiscal year, the CTC Program scholarship amount is \$3,500 per student, while the state average per student FEFP funding amount is \$6,152.67, resulting in a state savings of \$2,652.67 or \$37.4 million for 14,084 students.

If the scholarship programs ceased to exist, the state would experience increased costs in the FEFP program of \$39.0 million (\$1.6 million + \$37.4 million).

### **III. COMMENTS**

#### **A. CONSTITUTIONAL ISSUES:**

##### **1. Applicability of Municipality/County Mandates Provision:**

The municipality/county mandates provision relates only to general bills and therefore would not apply to this joint resolution.

##### **2. Other:**

None.

#### **B. RULE-MAKING AUTHORITY:**

The joint resolution does not raise the need for rules or rulemaking authority or direct an agency to adopt rules.

#### **C. DRAFTING ISSUES OR OTHER COMMENTS:**

This is a joint resolution which requires passage by a 3/5 vote of each chamber.

### **IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES**

On April 4, 2006, the Choice and Innovation Committee adopted one amendment and reported the bill favorably with a Committee Substitute (CS). The amendment clarifies that the proposed joint resolution does not establish a right to an education program not provided by law, and it revises the ballot summary accordingly.

The analysis is drawn to the CS.

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CS

CHAMBER ACTION

The Choice & Innovation Committee recommends the following:

**Council/Committee Substitute**

Remove the entire bill and insert:

House Joint Resolution

A joint resolution proposing the creation of Section 8 of Article IX of the State Constitution relating to education.

Be It Resolved by the Legislature of the State of Florida:

That the following creation of Section 8 of Article IX of the State Constitution is agreed to and shall be submitted to the electors of this state for approval or rejection at the next general election or at an earlier special election specifically authorized by law for that purpose:

ARTICLE IX

EDUCATION

SECTION 8. Equal opportunity to obtain a high quality education.--Every child deserves an equal opportunity to obtain a high quality education, regardless of his or her family's income, religion, or race.

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(a) Funding for a high quality public K-12 education through classroom instruction is fundamental. To make adequate provision for a high quality public K-12 education, at least sixty-five percent of school funding received by school districts shall be spent on classroom instruction, rather than administration. Classroom instruction and administration shall be defined by law.

(b) Students in prekindergarten through college who have disabilities, are economically disadvantaged, or whose parents request alternatives to traditional public education programs may participate, as provided by law, in education programs that include non-public schools. The legislature may enact and publicly fund prekindergarten through college education programs, without regard to the religious nature of any participant or non-public provider, notwithstanding any other provision of this Article or Section 3 of Article I of this constitution.

Nothing in this section establishes a right to an education program not provided by law.

BE IT FURTHER RESOLVED that the following statement be placed on the ballot:

CONSTITUTIONAL AMENDMENT

ARTICLE IX, SECTION 8

EQUAL OPPORTUNITY TO OBTAIN A HIGH QUALITY EDUCATION.--Proposing an amendment to the State Constitution to provide that every child deserves an equal opportunity to obtain a high quality education, regardless of his or her family's

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51 income, religion, or race; to provide that funding for high  
52 quality public K-12 education through classroom instruction is  
53 fundamental; to provide that to make adequate provision for a  
54 high quality public K-12 education, at least sixty-five percent  
55 of school funding received by school districts shall be spent on  
56 classroom instruction rather than administration; to provide  
57 that classroom instruction and administration shall be defined  
58 by law; to provide that students in prekindergarten through  
59 college who have disabilities, are economically disadvantaged,  
60 or whose parents request alternatives to traditional public  
61 education programs may participate, as provided by law, in  
62 education programs that include non-public schools; to provide  
63 that the Legislature may enact and publicly fund prekindergarten  
64 through college education programs, without regard to the  
65 religious nature of any participant or non-public provider,  
66 notwithstanding any other provision of this Article or of  
67 Section 3 of Article I of the State Constitution; and to provide  
68 that nothing in this amendment to the State Constitution  
69 establishes a right to an education program that is not provided  
70 by law.





## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 7097 CS PCB CCW 06-01 Postsecondary Career Education  
**SPONSOR(S):** Community Colleges & Workforce Committee and Patterson  
**TIED BILLS:** **IDEN./SIM. BILLS:** SB 2326

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Community Colleges & Workforce Committee	7 Y, 0 N	Thomas	Ashworth
1) Education Appropriations Committee	16 Y, 0 N, w/CS	Hamon	Hamon
2) Education Council		Thomas <i>NOT</i>	Cobb <i>Oce</i>
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

### SUMMARY ANALYSIS

The bill provides articulation mechanisms to improve the transition of students between secondary schools, career centers, and other postsecondary institutions, increases some financial aid to students, and creates a matching facilities grant program for school district career centers.

#### Articulation Provisions

- Requires that the statewide articulation agreement between secondary and postsecondary include credit earned through high school career and technical education majors and career academies.
- Requires an articulated career path be established by March 2007 for workforce education professions, including criminal justice, business, nursing, allied health and early childhood education. All of these career paths must include:
  - Credit earned in vocational, technical, or career certificate or diploma programs to an Associate in Science (AS) or Associate in Applied Science (AAS) degree program.
  - Credit earned in AS degree to credit in Bachelor of Science degree program.
  - Credit by public and private institutions.
  - Credit for experiential learning associated with minimum training requirements for employment.
- Requires the statewide articulation agreement to include admission of postsecondary vocational, technical, or career education certificate or diploma graduates from career centers.
- Requires the Office of Program Policy Analysis and Government Accountability to assess, evaluate, and report on all existing articulation agreements.
- Provides that a career center or a charter technical career center that offers a postsecondary adult vocational (PSAV) certificate program and has entered into an articulation agreement for the delivery of a related AAS degree program may use the designation "technical college."

The bill creates a **Career Centers Facilities Enhancement Challenge Grant Program** that provides for a match of private contribution to a school district career center to be eligible for a state match.

See FISCAL COMMENTS for details.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

Ensure lower taxes – The School District Career Facility Enhancement Challenge Grant Program will assist career centers to build high priority instructional and capital facilities. This will help provide avenues for students to qualify for high-skills/high-wage jobs.

Promote personal responsibility – The statewide articulation agreements will allow students to have a variety of ways to articulate between secondary and postsecondary educational programs. The State Board of Education is required to establish an articulation career path for specific workforce education professions that include criminal justice, business, nursing, allied health and early childhood education. All of these can lead to high-skill/high-wage jobs.

Empower families – This bill will provide educational opportunities and could lead to professions in high-skill/high-wage jobs, which will better support the family structure.

#### B. EFFECT OF PROPOSED CHANGES:

##### **Present Situation**

##### Career Centers

Currently s. 1001.44, F.S., provides for district school boards and district school boards of contiguous districts to establish or acquire career centers after first obtaining approval from the Department of Education (DOE). Before 2004, the statutory term used for such centers was “technical centers.” Career centers are often still referred to as technical centers. Career centers offer postsecondary adult vocational programs (PSAV) that result in a certificate for students that complete the program. Career centers are not degree issuing institutions. Florida currently has 47 such career centers.

##### Applied Associate in Science Degree

Associate in Applied Science (AAS) degrees are two year technical degrees indicating that a student has been trained in a particular field and is prepared for employment. These degrees are offered at degree issuing institutions, such as community colleges.

##### Articulation

The Commissioner of Education was directed by the passing of HB 769 (Chapter 2004-357, L.O.F.) to convene a Career Education Task Force (Task Force) to investigate issues related to workforce or career education. The Task Force chaired by the Lieutenant Governor, held several meetings to discuss workforce related issues. One of the recommendations of the Task Force was strengthening articulation at all levels.

Articulation was also a legislative priority in 2005. HB 6005 required the Department of Education (DOE) to conduct an “articulation audit”. As a result of that requirement DOE convened an articulation workgroup composed of representatives from school districts and community colleges in April 2005. The purpose of this workgroup was to look at the issues, review the current status of articulation from PSAV certificates to associate degrees and make recommendations on possible statewide articulation agreements.

The workgroup established a process to include the approval of the Articulation Coordination Committee (ACC). The ACC is appointed by and reports to the Commissioner of Education. The ACC exists to coordinate ways to help students move easily from institution to institution and from one level of education to the next. The workgroup has met on several occasions and recently made a presentation to the ACC to release the results of phase one of the project. This consisted of several

recommended PSAV certificate to associate degree statewide articulation agreements. The recommendations should be presented to the State Board of Education in the next month or two for approval.

#### Statewide Targeted Occupation List and Regional Targeted Occupations List

The statewide list of targeted occupations is determined by the Florida Workforce Estimating Conference (WEC). Section 216.136(a)2., F.S., requires the WEC to review data concerning the local and regional demands for short-term and long-term employment in high-skills/high-wage program jobs, as well as other jobs. The WEC develops the official targeted occupations list based on industry and occupational employment projections and wages prepared by the Labor Market Statistics Office in the Florida Agency for Workforce Innovation. The WEC meets semi-annually and makes recommendations to Workforce Florida, Inc. for use as a guide for establishing Regional Targeted Occupation Lists, which are approved by Workforce Florida, Inc.<sup>1</sup>

### **Effect of Proposed Changes**

#### Technical College

The bill relating to postsecondary education, authorizes district school boards that have established career centers as part of the district school system to enter into an articulation agreement for the delivery of specified associate in applied science (AAS) degree programs.

The bill authorizes career centers and charter technical career centers that offer a postsecondary adult vocational (PSAV) program designed to articulate into an associate in applied science degree and enters into an articulation agreement for the delivery of such a degree program to use the designation "technical college".

The bill defines a PSAV program as a job preparatory program, excluding continuing workforce education, through which a student receives a vocational certificate upon completion of instruction.

#### Statewide Articulation

The bill requires that State Board of Education statewide articulation agreements that govern articulation between secondary and postsecondary education include credit earned through high school career and technical education majors and career academies and admission of postsecondary vocational, technical, or career education certificate or diploma graduates from school district career centers or charter technical career centers.

The bill requires the State Board of Education (SBE) to establish an articulated career path for specific workforce education professions including, but not limited to, the program areas of criminal justice, business, nursing, allied health and early childhood education by March 1, 2007. The career path must provide for the articulation of:

- Credit earned in vocational, technical, or career certificate or diploma programs to associate in science degrees or associate in applied science degrees.
- Credit earned in associate in science degree programs to credit in baccalaureate degree programs.
- Credit awarded by public and private institutions.
- Credit for experiential learning associated with minimum training requirements for employment.

The bill requires the Office of Program Policy Analysis and Government Accountability (OPPAGA) to collect, review, and conduct an assessment and evaluation of all existing statewide articulation agreements and to report on the results by December 2006.

#### School District Career Center Facility Enhancement Challenge Grant

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<sup>1</sup> See <http://www.labormarketinfo.com/wec/index.htm>

The bill establishes the School District Career Center Facility Enhancement Challenge Grant Program for the purpose of assisting career centers in building high priority instructional and capital facilities. For the school district to be eligible for a match by a state appropriation, one-third of the total cost of a facility construction project must be raised by the district, through its direct-support organization, from private sources. The state match, subject to the General Appropriations Act, may equal the amount raised up to the cost of the project. The final one-third of funds must be provided from the school district's local capital funds.

If the state match does not equal one-third of the cost, the district must renegotiate the terms of the private contributions with the donors. If the project is terminated, the private donations, plus interest, reverts to the direct support organization, and may be remitted to the donor at the donor's discretion.

After the completion of a project, one-third of any unexpended funds must be reserved for future facility construction projects by the career center that originally received the private contribution. One-third of the unexpended funds must be returned to the General Revenue Fund and one-third must be returned to the school district.

#### C. SECTION DIRECTORY:

Section 1. Amends s. 1001.44, F.S.; authorizing an articulation agreement for delivery of associate in applied science degree programs by career centers; providing requirements for use of the designation "technical college"; providing a definition.

Section 2. Amends s. 1002.34, F.S.; providing for a charter technical career center to use the designation "charter technical college"; providing a definition.

Section 3. Amends s. 1007.22, F.S.; revising provisions relating to establishment of interinstitutional mechanisms by public postsecondary educational institutions.

Section 4. Amends s. 1007.23, F.S.; revising components of the statewide articulation agreement; revising terminology; requiring the State Board of Education to establish articulated career paths for specific professions; requiring career paths to provide credit for certain programs and experiential learning.

Section 5. Creates s. 1011.802, F.S.; establishing the School District Career Center Facility Enhancement Challenge Grant Program; authorizing a school district direct-support organization to solicit funds and establish a separate career center capital facilities matching account for private contributions for instructional facility construction projects; providing for match by state appropriations; providing for a portion of the cost of a facility construction project to be provided from a school district's local capital funds; providing State Board of Education requirements relating to capital outlay budget request for such projects; providing for reversion of funds.

Section 6. Creates new language; requiring the Office of Program Policy Analysis and Government Accountability to assess articulation agreements and identify career center programs that may articulate to certain degree programs; requiring recommendations.

Section 7. Providing an effective date of July 1, 2006.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues: See FISCAL COMMENTS
2. Expenditures: See FISCAL COMMENTS

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:  
The bill does not appear to have a fiscal impact on local government revenues.
2. Expenditures:  
The bill does not appear to have a fiscal impact on local government expenditures.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Not applicable.

### D. FISCAL COMMENTS:

#### School District Career Center Facility Enhancement Challenge Grant

For the school district to be eligible for a match by a state appropriation, one-third of the total cost of a facility construction project must be raised by the district, through its direct-support organization, from private sources. The state match, subject to the General Appropriations Act, may equal the amount raised up to the cost of the project. The final one-third of funds must be provided from the school district's local capital funds.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:  
The bill does not require a municipality or county to spend funds or to take any action requiring the expenditure of funds.
2. Other: None

### B. RULE-MAKING AUTHORITY:

None

### C. DRAFTING ISSUES OR OTHER COMMENTS:

None

#### **IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES**

On March 7, 2006, the Community College and Workforce Committee passed two amendments. The amendments made the following changes.

- Required that the articulation career path for workforce education professions shall include the program area of early childhood education.
- Removed of the awarding of a Florida high school diploma for the requirements of the GED Success Scholarship.

On April 4, 2006, the Education Appropriations Committee passed an amendment that made the following changes:

- Removed Florida Student Assistance Grants (FSAG) eligibility for students enrolled in postsecondary career certificate programs.
- Removed the GED Success Scholarship Program.

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CHAMBER ACTION

The Education Appropriations Committee recommends the following:

**Council/Committee Substitute**

Remove the entire bill and insert:

A bill to be entitled

An act relating to postsecondary education; amending s. 1001.44, F.S.; authorizing an articulation agreement for delivery of associate in applied science degree programs by career centers; providing requirements for use of the designation "technical college"; providing a definition; amending s. 1002.34, F.S.; providing for a charter technical career center to use the designation "technical college"; providing a definition; amending s. 1007.22, F.S.; revising provisions relating to establishment of interinstitutional mechanisms by public postsecondary educational institutions; amending s. 1007.23, F.S.; revising components of the statewide articulation agreement; revising terminology; requiring the State Board of Education to establish articulated career paths for specific professions; requiring career paths to provide credit for certain programs and experiential learning; creating s. 1011.802, F.S.; establishing the School District Career Center Facility Enhancement Challenge

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Grant Program; authorizing a school district direct-support organization to solicit funds and establish a separate career center capital facilities matching account for private contributions for instructional facility construction projects; providing for match by state appropriations; providing for a portion of the cost of a facility construction project to be provided from a school district's local capital funds; providing State Board of Education requirements relating to capital outlay budget requests for such projects; providing for reversion of funds; requiring the Office of Program Policy Analysis and Government Accountability to assess articulation agreements and identify career center programs that may articulate to certain degree programs; requiring recommendations; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (4) is added to section 1001.44, Florida Statutes, to read:

1001.44 Career centers.--

(4) DISTRICT SCHOOL BOARD CAREER CENTER PROGRAM

DELIVERY.--

(a) A district school board with an established career center as part of the district school system may enter into an articulation agreement for the delivery of specified associate in applied science degree programs.



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(b) A career center that offers a postsecondary adult vocational program designed to articulate into an associate in applied science degree program and enters into an articulation agreement for the delivery of such an associate in applied science degree program may use the designation "technical college."

(c) For purposes of this subsection, "postsecondary adult vocational program" is a job preparatory program, excluding continuing workforce education, through which a student receives a vocational certificate upon completion of instruction.

Section 2. Subsection (20) is added to section 1002.34, Florida Statutes, to read:

1002.34 Charter technical career centers.--

(20) DESIGNATION AS A TECHNICAL COLLEGE.--A charter technical career center that offers a postsecondary adult vocational program designed to articulate into an associate in applied science degree program and enters into an articulation agreement for the delivery of such an associate in applied science degree program may use the designation "technical college." For purposes of this subsection, "postsecondary adult vocational program" is a job preparatory program, excluding continuing workforce education, through which a student receives a vocational certificate upon completion of instruction.

Section 3. Subsection (3) of section 1007.22, Florida Statutes, is amended to read:

1007.22 Articulation; postsecondary institution coordination and collaboration.--

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(3) Public postsecondary educational institutions ~~serving the same students in a geographic and service area~~ are encouraged to establish appropriate interinstitutional mechanisms to achieve cooperative planning and delivery of academic programs and related services, share a high-cost instructional facility and equipment, coordinate credit and noncredit outreach activities, have access to each other's library and media holdings and services, and provide cooperative campus activities and consultative relationships for the discussion and resolution of interinstitutional issues and problems which discourage student access or transfer.

Section 4. Subsections (1) and (3) of section 1007.23, Florida Statutes, are amended to read:

1007.23 Statewide articulation agreement.--

(1) The State Board of Education shall establish in rule a statewide articulation agreement that governs:

(a) Articulation between secondary and postsecondary education, including credit earned through high school career and technical education majors and career academies;

(b) Admission of associate in arts degree graduates from community colleges and state universities;

(c) Admission of applied technology diploma program graduates from community colleges or career centers;

(d) Admission of associate in science degree and associate in applied science degree graduates from community colleges;

(e) The use of acceleration mechanisms, including nationally standardized examinations through which students may earn credit;

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(f) General education requirements and statewide course numbers as provided for in ss. 1007.24 and 1007.25; and

(g) Articulation among programs in nursing; ~~and~~

(h) Admission of postsecondary vocational, technical, or career certificate or diploma graduates from school district career centers or charter technical career centers.

(3) The articulation agreement must guarantee the statewide articulation of appropriate workforce education ~~development~~ programs and courses between school districts and community colleges and specifically provide that every applied technology diploma graduate must be granted the same amount of credit upon admission to an associate in science degree or associate in applied science degree program unless it is a limited access program. Preference for admission must be given to graduates who are residents of Florida. By March 1, 2007, the State Board of Education shall establish an articulated career path for specific workforce education professions, including, but not limited to, the program areas of criminal justice, business, nursing, allied health, and early childhood education. The career paths shall provide for the articulation of:

(a) Credit earned in vocational, technical, or career certificate or diploma programs to associate in science degrees or associate in applied science degrees.

(b) Credit earned in associate in science degree programs to credit in baccalaureate degree programs.

(c) Credit awarded by public and private institutions.

(d) Credit for experiential learning associated with minimum training requirements for employment.

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Section 5. Section 1011.802, Florida Statutes, is created to read:

1011.802 School District Career Center Facility Enhancement Challenge Grant Program.--

(1) There is established the School District Career Center Facility Enhancement Challenge Grant Program for the purpose of assisting career centers in building high priority instructional capital facilities consistent with s. 1001.44, including common areas connecting such facilities. The direct-support organizations that serve the school districts may solicit gifts from private sources which are eligible for state matching funds for capital facilities. For purposes of this section, private sources of funds shall not include any federal, state, or local government funds that a school district may receive.

(2) The School District Career Center Facility Enhancement Challenge Grant Program shall provide funds to match private contributions for the development of high priority instructional capital facilities, including common areas connecting such facilities, within the career centers.

(3) Within the direct-support organization of each school district, a separate career center capital facilities matching account must be established for the purpose of providing matching funds from the direct-support organization's unrestricted donations or other private contributions for the development of high priority instructional capital facilities, including common areas connecting such facilities. The Legislature may appropriate funds for distribution to a school district after matching funds are certified by the direct-

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162 support organization and school district to the Department of  
163 Education. The Public Education Capital Outlay and Debt Service  
164 Trust Fund shall not be used as the source of the state match  
165 for private contributions.

166 (4) A project may not be initiated unless all private  
167 funds for planning, construction, and equipping the facility  
168 have been received and deposited in the direct-support  
169 organization's matching account and the state's share for the  
170 minimum amount of funds needed to begin the project has been  
171 appropriated by the Legislature. The Legislature may appropriate  
172 the state's matching funds in one or more fiscal years for the  
173 planning, construction, and equipping of an eligible facility.  
174 However, these requirements shall not preclude the school  
175 district or direct-support organization from expending available  
176 funds from private sources to develop a prospectus, including  
177 preliminary architectural schematics or models, for use in its  
178 efforts to raise private funds for a facility. Additionally, any  
179 private sources of funds expended for this purpose are eligible  
180 for state matching funds if the project is awarded grant funds  
181 under this section.

182 (5) To be eligible to participate in the School District  
183 Career Center Facility Enhancement Challenge Grant Program, a  
184 school district, through its direct-support organization, shall  
185 raise contributions from private sources equal to one-third of  
186 the total cost of a facility construction project. After raising  
187 such contributions, the school district shall be eligible for a  
188 match by a state appropriation equal to the amount raised for a  
189 facility construction project up to one-third of the cost of the

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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190 project, subject to the General Appropriations Act. Another one-  
191 third of the total cost must be provided from the school  
192 district's local capital funds.

193 (6) If the state's share of the required match is  
194 insufficient to meet the requirements of subsection (5), the  
195 school district shall renegotiate the terms of the contribution  
196 with the donors. If the project is terminated, each private  
197 donation, plus accrued interest, shall revert to the direct-  
198 support organization for remittance to the donor at the donor's  
199 discretion.

200 (7) By September 1 of each year, the State Board of  
201 Education shall transmit to the Legislature, in the capital  
202 outlay budget request, a list of projects that meet all  
203 eligibility requirements to participate in the School District  
204 Career Center Facility Enhancement Challenge Grant Program and a  
205 budget request that includes the recommended schedule necessary  
206 to complete each project.

207 (8) In order for a project to be eligible under this  
208 program, it must be survey-recommended under the provisions of  
209 s. 1013.31, included in the school district's 5-year capital  
210 improvement plan, and receive prior approval from the State  
211 Board of Education.

212 (9) Any project funds that are unexpended after a project  
213 is completed shall revert to the school district direct-support  
214 organization's career center capital facilities matching  
215 account. One-third of such unexpended funds shall be reserved  
216 for the school district career center that originally received  
217 the private contribution for the purpose of providing private

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218 matching funds for future facility construction projects as  
219 provided in this section. One-third of such unexpended funds  
220 shall be returned to the General Revenue Fund. One-third of such  
221 unexpended funds shall be returned to the school district.

222 (10) The surveys, architectural plans, facility, and  
223 equipment shall be the property of the participating school  
224 district.

225 Section 6. (1) As part of determining the appropriate  
226 courses and programs for statewide articulation, the Office of  
227 Program Policy Analysis and Government Accountability shall  
228 collect, review, and conduct an assessment of all existing  
229 statewide articulation agreements and all existing articulation  
230 agreements between school district career centers or charter  
231 technical career centers and community colleges by September 30,  
232 2006.

233 (2) The Office of Program Policy Analysis and Government  
234 Accountability shall use the information compiled pursuant to  
235 subsection (1) to evaluate the effectiveness of local and  
236 statewide interinstitutional articulation agreements and to  
237 identify other postsecondary technical or career programs within  
238 a school district career center or charter technical career  
239 center that may articulate to an associate in science degree  
240 program or an associate in applied science degree program on an  
241 individual course or block basis for statewide  
242 interinstitutional articulation agreements. By December 31,  
243 2006, the Office of Program Policy Analysis and Government  
244 Accountability shall submit a report to the President of the  
245 Senate and the Speaker of the House of Representatives.

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246        Section 7.   This act shall take effect July 1, 2006.



**HB 7171 CS**

**BILL #:** HB 7171 CS      PCB CI 06-04    Charter Schools  
**SPONSOR(S):** Choice & Innovation Committee and Legg  
**TIED BILLS:**                                 **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Choice & Innovation Committee	7 Y, 0 N, w/CS	Kooi	Kooi
1) Education Appropriations Committee	15 Y, 3 N, w/CS	Eggers	Hamon
2) Education Council		Kooi <i>mk</i>	Cobb <i>lcc</i>
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

The bill sets forth legislative findings regarding the benefits and challenges of the state's charter schools and provides legislative intent to establish a state-level commission to sponsor and support charter schools and to authorize municipalities, state universities, community colleges, and regional consortia as cosponsors of charter schools throughout the state.

The bill establishes the Florida Schools of Excellence Commission whose members are appointed by the State Board of Education through recommendations by the Governor, the President of the Senate, and the Speaker of the House of Representatives, and provides for funding, and an executive director and staff. It further provides a list of powers and duties of the commission, including the power to sponsor charter schools, the power to approve the cosponsors listed above to cosponsor charter schools, and duties relating to support of those approved charter schools and cosponsors.

The bill sets forth timelines, processes and criteria for the review, approval, denial, termination, and non-renewal of cosponsors. It also provides timelines as well as rights and obligations to be included in an agreement negotiated and entered into by the commission and its various individual cosponsors.

The bill incorporates by reference a number of subsections within current charter school law including, but not limited to, provisions relating to receiving, reviewing and approving or denying charter school applications. It also provides for the appellate rights of denied applicants. It further allows existing charter schools previously approved and chartered through a district school board to apply and contract with the commission or one of its cosponsors as long as the charter school is free of further contractual obligations with the district school board.

The bill requires the commission to annually report to the State Board of Education and provides rulemaking authority to the State Board of Education.

The bill appropriates \$420,747 from the General Revenue Fund to the Department of Education to administer this act. The bill will have a significant, but indeterminate fiscal impact. Please see the FISCAL ANALYSIS section of this analysis.

The bill may involve constitutional issues which are discussed in detail in the CONSTITUTIONAL ISSUES section of this analysis.

The bill provides for an effective date of July 1, 2006.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

*Provide limited government-* The bill establishes the Florida Schools of Excellence Commission under the supervision of the State Board of Education (SBE) for the development and support of charter schools. The bill provides the SBE with rulemaking authority and establishes the powers and duties of the commission. The bill would alleviate some of the administrative burden on school districts in relation to their duties to monitor charter schools. The bill increases the SBE's authority to resolve the appeals of denied charter school applicants by the commission, and also creates the authority for the commission to revoke its approval of a cosponsor after providing due process.

*Empower families –* The bill will likely lead to more charter schools in more areas and should provide increased educational options for parents and their school-aged children.

#### B. EFFECT OF PROPOSED CHANGES:

##### Background

##### *Authorizers*

Across the nation, states differ in their administration, implementation, and oversight of charter schools. Charter school authorizers are entities charged with oversight of individual charter schools. According to the Education Commission of the States (ECS) Issue Brief: *A State Policymaker's Guide to Alternative Authorizers of Charter Schools*, during the 2004-05 school year, there were over 800 charter school authorizers across the country, 700 of those being local school boards.<sup>1</sup> Alternative forms of charter school governance have received significant attention in the recent past due to the growing recognition that authorizers are vital components to the success of charter schools. Examples of alternative authorizers include independent special-purpose charter boards, intermediate or regional educational entities, and mayors.

The authorizer's functions include, but are not limited to, continuous monitoring of charter schools so that they are able to deal with issues that arise at an early stage, ensuring academic and financial accountability, offering technical assistance such as workshops or providing referrals, advocating to agencies on behalf of the charter school to reduce school burdens, and garnering community support.<sup>2</sup> According to ECS, during the development of initial state charter school laws, the charter school authorizer's role was overlooked.

Consequently, there is a growing recognition that effective authorizing is essential to the success of charter schools. According to ECS, many states are interested in utilizing entities other than local school boards to authorize charter schools because local school districts are often too constrained with managing, addressing, and correcting the problems of the existing public schools within their district. Local school district resources and personnel are limited; therefore, charter schools may not always receive the oversight and assistance that is needed to operate a successful charter school.

##### *Florida Charter School Law*

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<sup>1</sup> Hassel, Bryan, Todd Ziebarth and Lucy Steiner, *Education Commission of the States (ECS) Issue Brief: A State Policymaker's Guide to Alternative Authorizers of Charter Schools*, Denver, Co: Education Commission of the States, September 2005, p.2.

<sup>2</sup> Presentation by Mark Cannon, Executive Director of National Association of Charter School Authorizers (NASCA), to the Joint Hearing of Florida House Committee on Choice & Innovation and Pre-K-12 Education, February 8, 2005. PowerPoint presentation: *Authorizer Role in Increasing the Number of Quality Charter Schools*.

The Florida Legislature authorized charter schools in 1996. Currently, for the 2005-2006 school year, 92,158 students attend the 333 charter schools in Florida. As provided in section 1002.33, F.S., charter schools are nonsectarian public schools of choice that operate under a performance contract (a charter) with a public sponsor. Under Florida law, district school boards are the only entities that can sponsor charters, although upon appeal the State Board of Education may decide that the district school board must approve or deny an application.<sup>3</sup> Additionally, Florida Agricultural and Mechanical University, Florida Atlantic University, Florida State University, and the University of Florida are currently authorized to grant charters and sponsor development research (laboratory) schools created under section 1002.32, F.S.<sup>4</sup>

Pursuant to current law, charter schools enter into an agreement (charter) with the local district school board that addresses all major issues involving the operation of the charter school including, but not limited to, the school's mission, students served, curriculum, methods of student academic assessment, method for conflict resolution, financial and administrative management, and the term of the charter. Pursuant to section 1002.33(16), F.S., charter schools are free from many state regulations and mandates. However, they are still held accountable to the district sponsor that grants their application and to the parents who choose them for the academic and financial performance of the school and its students.

### *Identified Challenges*

In spite of the tremendous popularity and growth of the number of charter schools within the state, they are still faced with several challenges that make their efforts to provide innovative and high quality educational options to parents more difficult. The challenges most often cited by charter schools include financial deficits, particularly among new schools, district provision of administrative services, and a lack of communication and support among charter schools and school districts.

The number of charter schools with a financial deficit<sup>5</sup> increased from 18% in 1999-00 to 29% in 2002-03.<sup>6</sup> New charter schools, schools that have been in existence for 1-2 years, have the highest deficit rate among charter schools at approximately 38%, whereas charter schools that have been in existence for 3-4 years and 5-7 years have a deficit rate of 20% and 21%, respectively.<sup>7</sup>

Charter schools face considerable financial difficulties related to start-up and facilities related costs, inaccurate enrollment projections, lack of financial management practices, and lack of economies of scale. These challenges put charter schools at risk for chronic financial deficits. Furthermore, the frequent lack of expertise in education budgeting and finance and lack of familiarity with government accounting conventions can lead to an inability to generate complete, accurate, and timely financial data making the identification and assistance of charter schools with deteriorating financial conditions even more challenging.<sup>8</sup>

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<sup>3</sup> Sections 1002.33(5),(6), F.S.

<sup>4</sup> Section 1002.32(2), F.S., provides that for the purpose of state funding, Florida Agricultural and Mechanical University, Florida Atlantic University, Florida State University, and the University of Florida, and other universities approved by the State Board of Education and the Legislature are authorized to sponsor a lab school.

<sup>5</sup> As determined in the Auditor General's Report Number 2005-054, charter schools operating with an end-of-year financial deficit are those charter schools that ended the year with a deficit of unreserved balance in their general fund (for statements using the governmental model) or deficit unrestricted net assets in their unrestricted fund (for statements using the not-for-profit model); Office of Program Policy Analysis and Government Accountability (OPPAGA) Report Number 05-11: *Charter School Application Requirements Are Reasonable; Financial Management Problematic*, March 2005, p. 8.

<sup>6</sup> Presentation by Jane Fletcher, Staff Director, Education, of OPPAGA, to the Joint Hearing of Florida House Committee on Choice & Innovation and Pre-K-12 Education, February 8, 2005. PowerPoint presentation:

*Charter School Review*.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.* at 1.

Under Florida law, a school district sponsor is required to provide the following administrative and educational services to charter schools: contract management services, full-time equivalent and data reporting services, exceptional student education administration services, test administration services, processing of teacher certificate data services, and information services. The school district providing these services is authorized to withhold up to 5% of the charter school's per student funding as payment for the provision of these services.<sup>9</sup> Many charter schools complain that some districts are not providing all of the statutorily required services, and districts often question whether the 5% administrative fee generates an adequate amount of money for school districts to fulfill their responsibilities to charter schools.

Perhaps the biggest challenge facing the success of charter schools today is communication among charter schools and school districts. School district attitudes toward charter schools as well as their provision of services and communication has, in many cases, improved since Florida's first charters were opened approximately ten years ago. Nevertheless, there may always be a certain degree of tension involved in the relationships of school districts and charter schools due to the inherently adversarial nature of such relationships.<sup>10</sup> This tension is problematic given the fact that cooperation between the two parties is often critical in providing a high quality education to charter school children.

### **Effects of Proposed Changes**

#### *Establishment of a state-level charter school commission*

The bill sets forth findings related to the contributions made by charter schools throughout the state, specifically, the valuable role charter schools play in providing high quality options to parents and their children, and the importance of charter schools in improving student performance and the quality of all public schools.

It states legislative intent to establish a state-level commission that will place its sole focus on the development and support of charter schools. It indicates legislative intent to seek the support and partnership of entities such as municipalities, universities, community colleges and regional educational consortia as cosponsors of charter schools for the purpose of accessing new sources of community support and expertise.

The bill establishes the Florida Schools of Excellence Commission (commission) under the supervision of the State Board of Education and authorizes the following appropriations:

- Three positions and \$165,000 in approved salary rate,
- \$214,630 from recurring general revenue funds for salaries and benefits,
- \$199,238 from recurring general revenue funds for expenses, and
- \$5,700 from nonrecurring general revenue.
- \$1,179 in recurring general revenue funds for transfer to the Department of Management Services for the Human Resource Services Statewide Contract.

The bill authorizes the commission to seek and utilize funds through private donations as well as public and private grants to assist in the startup. The bill authorizes the commission or cosponsor of a charter school approved pursuant to this act to retain no more than the actual cost of its administrative overhead costs expended to sponsor the charter school not to exceed 5 percent of the funding provided to the charter school.

The bill provides that the commission be composed of seven members appointed by the Governor (3), the President of the Senate (2), and the Speaker of the House of Representatives (2), and requires that

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<sup>9</sup> Section 1002.33(20), F.S.

<sup>10</sup> See Alachua County response to charter school survey conducted by the Florida Association of District School Superintendents

such appointments be made by September 1, 2006. The member terms are staggered one and two year terms initially, and then set at two years thereafter. A process for filling vacancies is also provided.

The bill requires monthly meetings of the commission and encourages the commission to schedule its first meeting no later than October 1, 2006. It provides for the appointment of an executive director to employ staff to handle the necessary administrative support for the commission.

### *Commission powers and duties*

The bill gives the commission the power to review applications and approve and sponsor charter schools. It also provides the commission with the power to terminate or not renew their sponsored charter schools. The requirements and process provided for the commission's review of charter applications is the same as that required of school districts' review of current charter applications as set forth in section 1002.33(6), F.S. The process and causes for termination are as set forth in section 1002.33(8), F.S., which is the current provision for termination and non-renewal of school district sponsored charter schools.

The bill empowers the commission to authorize municipalities, state universities, community colleges, and regional consortia to review, approve, and deny charter school applications. These entities would then act as cosponsors of charter schools. It also provides the commission with authority to terminate or not renew the cosponsors that it approves.

The bill indicates legislative intent to include municipalities, state universities, community colleges, and regional consortia as cosponsors of charter schools for the purpose of accessing the type of community support and resources that such entities have to offer. In setting forth the duties of the commission the bill specifically requires that the commission's cosponsoring relationship with state universities and community colleges allow for dual enrollment and a determination of the feasibility of cooperating with Centers for Autism and Related Disabilities to provide high quality educational options to parents of autistic children.<sup>11</sup>

The bill sets forth numerous duties of the commission aimed at providing greater expertise in approving and developing high quality charter schools, providing responsive academic and budgetary technical support, promoting accountability, seeking private funding, and alleviating administrative burdens of school districts that currently sponsor charter schools. It incorporates the monitoring requirements of section 1002.33(5)(b), F.S., and the administrative services requirements of section 1002.33(20), F.S. for charter schools approved by the commission.<sup>12</sup>

Although the bill provides that cosponsors would be primarily responsible for the provision of administrative services to the charter schools they sponsor, the duties of the commission indicate an intent that the commission act as a partner with its cosponsor in providing technical assistance and access to expertise at a state and national level regarding matters such as Exceptional Student Education services, English for Speakers of Other Languages, and other specialized areas.

### *Cosponsor applications*

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<sup>11</sup> Known as CARD centers, these entities are operated through several universities throughout the state, are staffed by individuals with superior expertise in dealing with autistic children, and are established under section 1004.55, F.S., to research and provide nonresidential assistance and training to parents in diagnosing, treating and educating their autistic children.

<sup>12</sup> As noted above, these services include: contract management services, full-time equivalent and data reporting services, exceptional student education administration services, test administration services, processing of teacher certificate data services, and information services. The bill only allows the commission or cosponsor to be reimbursed for actual costs of these services up to 5% of the charter school's per student funding.

The bill requires that the commission begin accepting applications from cosponsors that wish to submit them no later than January 31, 2007. It provides the commission with a 90-day timeline to review and approve or deny the application, though this 90-day requirement may be waived by the applicant. The January 31, 2007 starting date is intended to allow cosponsors to be approved to begin accepting charter school applications on or before September 1, 2007, as set forth in section 1002.33(6)(b), F.S.

The bill requires that the commission limit the number of charter schools that a cosponsor may approve. However, the cosponsor may apply to raise this limit at some point in the future. This will ensure that a cosponsor is able to demonstrate that it has the capacity, expertise, and commitment to approve, develop and maintain high quality charter schools before allowing the number of its charter schools to increase.

The bill requires that in order to be approved as a cosponsor, the eligible entity must provide evidence in its application that it has, or can contractually provide, the capacity and expertise necessary to provide what is required to sponsor a charter school. It requires a demonstrated commitment to raising and contributing financial resources, providing equal access to all children, maintaining a diverse student population, and focusing on low-income, low performing and underserved children. It requires articulated accountability goals and a policy to prevent conflicts of interest.

The bill states that the commission's decision whether to approve or deny a cosponsor application is not subject to the processes set forth in the Administrative Procedures Act<sup>13</sup>, but is instead subject to the same process set out in the current charter school statute for the appeal of charter application denials to the State Board of Education.

#### *Cosponsor agreements*

The bill requires that the commission and its cosponsors enter into an agreement which sets forth rights and obligations, many of which are set forth in the application requirements noted above. The agreement must include explanations of how facilities and assets of dissolved charter schools will be handled, and a provision requiring that the cosponsor report student enrollment to the local school district school board for funding purposes. The agreement must also include provisions requiring cosponsors to annually appear before and provide a report to the commission on its charter schools and to assist in providing commission reports to the State Board of Education.

The bill provides for discretion on the part of the commission in defining additional reasonable terms within the agreement that it deems are necessary given the unique characteristics of the particular sponsoring entity. Unique characteristics would be likely to exist in any cosponsor, and is particularly likely with different municipalities. Such characteristics may include the size of the city, the demographics of its student population, or even the demographics of the local school district and how a municipal charter might affect other schools within that school district. This provision would provide the commission with discretion in crafting an agreement that meets the unique needs of the cosponsor while still protecting the welfare and interests of children in the surrounding schools.

The bill prohibits any potential cosponsor from receiving applications prior to officially executing its cosponsor agreement with the commission. It states that the agreement must be proposed and negotiated within six months of approval of the cosponsor application as currently provided in section 1002.33(6)(h), F.S.,<sup>14</sup> and that it shall be attached to and govern any charter school contract entered into by the cosponsor.

#### *Cosponsor revocation*

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<sup>13</sup> Ch. 120, F.S.

<sup>14</sup> The bill cross references section 1002.33(6)(i), F.S., due to the fact that Section 2 of the bill rennumbers the relevant paragraph.

The bill states that the commission may revoke its approval of a cosponsor after providing due process in the form of notice and a hearing as set forth in State Board of Education rule. The approval must be revoked if, after the hearing, the commission finds that the cosponsor is not in compliance, or is not willing to comply with its cosponsor agreement.

The commission is authorized to immediately assume sponsorship of any schools that were sponsored by the revoked cosponsor. The assumption of sponsorship may remain permanent if the commission so desires, or the commission may work with the charter school and the local school district to facilitate application and approval of a charter with the district.

### *Charter school applications*

The bill states that charter applications that are submitted to the commission or any of its approved cosponsors must contain the same information as required in section 1002.33(6), F.S. It also provides that such applications will be reviewed and approved or rejected in accordance with the terms set forth in current charter school law.<sup>15</sup> It also sets forth timelines by which the applications must be received and reviewed, and provides for an appeal process for application denials, including review by the Charter School Appeal Commission and the State Board of Education.

The bill amends current law regarding application process and review so that in order to exercise the right to appeal a school district's application denial, a charter school must have submitted the same or a substantially similar application to the commission or one of its cosponsors. If the applicant has not yet been denied by the commission or one of its cosponsors it must file the application with one of those entities the following August and if it is denied again, the applicant will then have thirty days to file its appeal of the district's denial. This provision and the existence of multiple authorizers should significantly reduce the number of appeals as well as reducing the likelihood that a district will be forced to sponsor a charter applicant that it has rejected.

The bill allows currently existing charter schools that have been approved and operating under a charter with a school district to apply to and enter into a new contract with the commission or one of its cosponsors. However, the bill clarifies that only charter schools whose contract has expired or whose school district sponsor agrees to rescind a current contract may enter into a new contract with the commission or a cosponsor. Finally, the bill provides that a charter school that switches sponsors must be allowed to continue to utilize the facilities and equipment it has been using under its contract with the school district.

### *Incorporation of the charter school statute*

The bill incorporates by reference, sections 1002.33(7)-(12), (14), and (16)-(19), F.S. Section 1002.33(7), F.S., deals with the numerous items and issues that must be included in a charter contract between charter schools and their sponsors. These include issues relating to mission, curriculum, instructional strategies, student performance expectations, admissions, financial and administrative management, term of the contract, facilities, teacher qualifications, governance structure, renewal, and modification.

Section 1002.33(8), F.S., sets forth the causes by which a charter contract may be revoked or not be renewed. The causes include student performance, fiscal mismanagement, violations of law and other good cause. It also provides for 90-day notice by the sponsor prior to non-renewal or revocation with the opportunity for an informal hearing upon receipt of the notice. There is also a provision for immediate revocation for good cause or to protect the health, safety and welfare of the students. Finally, this incorporated subsection provides for the disposition of remaining debts and assets of the charter school upon termination or non-renewal.

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<sup>15</sup> Section 1002.33(6), F.S., provides for the application process and review of charter schools.



Section 1002.33(9), F.S., provides requirements for charter schools, including accountability, compliance with laws and rules, annual financial audits, and other financial reporting requirements. It also requires the governing board of the charter school to exercise oversight, and report to its sponsor regarding student achievement data, financial status, facilities and personnel issues.

Section 1002.33(10), F.S., addresses the eligibility of students for enrollment at a charter school. It requires that the charter school be open to any child residing in the district and requires that random selection process be implemented if the number of applicants exceed the number of seats available. This incorporated subsection allows enrollment preference in somewhat limited circumstances and allows a charter school to limit its enrollment to target a certain student population by age, students considered to be dropout risks, charter schools in the workplace or municipality, students within a reasonable distance of the charter school, students who meet certain academic, artistic, or other eligibility standards, and students from a feeder pattern of the charter school.

Section 1002.33(11), F.S., allows charter school students to participate in interscholastic extracurricular activities at the public school to which the student would be otherwise assigned to attend.

Section 1002.33(12), F.S., addresses charter school employees providing that a charter school may select its own employees and that such employees have the option to bargain collectively. It provides options as to the organization of such employees and allows them to take leave from employment with a school district while employed at a charter school without forfeiting seniority and other benefits of school district employment. It further requires that charter school teachers be certified, that charter schools and their employees are governed by the provisions of section 768.28, F.S., relating to sovereign immunity, and that employees of charter schools that are considered public employers may participate in the Florida Retirement System.

Section 1002.33(14), F.S., requires that any arrangement entered into by a charter school to borrow or secure funds must indemnify the state and the school district from liability and clarifies that such debts not obligations of the state or school district.

Section 1002.33(16), F.S., provides exemption for charter schools from numerous statutory requirements in the school code. Statutes relating to student assessment and school grades, the provision of services to student with disabilities, civil rights, and health, safety and welfare, and open meeting and public records continue to apply to charter schools.

Section 1002.33(17), F.S., provides for funding of students in charter schools. It requires that charter schools report student enrollment to their sponsor and sets forth a per student funding formula that includes Florida Education Finance Program funds, including gross state and local funds, discretionary lottery funds, and funds from the school district's current operating discretionary millage levy. It specifies an eligible charter school's entitlement to federal funds for provision of services to eligible students. It requires timely reimbursement and processing of paperwork required to access federal funding by the school district and provides for payment of interest on late reimbursements.

Section 1002.33(18), F.S., sets forth standards for charter school facilities. It specifies that charter schools may choose whether to comply with the Florida Building Code or the State Requirements for Educational Facilities. It requires charter school facilities' compliance with the Florida Fire Prevention Code, exempts them from ad valorem taxes, permit fees, building licenses, impact fees, and service availability fees. It requires that school district surplus property be made available for use by charter schools and allows the designation of impact fees for charter school facilities where the school facility is created to mitigate the impact of development.

Section 1002.33(19), F.S., provides that charter schools are eligible for charter school capital outlay funding pursuant to section 1013.62, F.S.

*Charter school information and annual report*

The bill requires that the commission be a source of information for parents throughout the state by maintaining information technology to allow parents to make informed educational choices for their children. It also requires the commission to provide an annual report to the State Board of Education regarding the academic performance and fiscal responsibility of all charter schools and cosponsors approved under this new section. Finally, it provides the State Board of Education with rulemaking authority necessary to facilitate the implementation of this new section.

#### C. SECTION DIRECTORY:

**Section 1.** Creates section 1002.335, F.S.; establishing the Florida Schools of Excellence Commission as a charter authorizing entity; providing legislative findings and intent; providing startup funds; providing for membership and powers and duties of the Commission; requiring collaboration with identified entities for cosponsoring of charter schools; providing approval requirements of cosponsors; providing components for and revocation of cosponsor agreements; providing for charter application and review procedures; authorizing existing charter schools to apply; providing for application of specified provisions of law; requiring access to information by parents; requiring annual report by Commission; requiring rulemaking.

**Section 2.** Amends section 1002.33, F.S., providing requirements for right to appeal application denial; revising provisions relating to student funding; revising provisions related to facilities.

**Section 3.** Authorizes appropriations and provides for an effective date.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

#### A. FISCAL IMPACT ON STATE GOVERNMENT:

##### 1. Revenues:

The bill does not impact state government revenues.

##### 2. Expenditures:

The bill establishes the Florida Schools of Excellence Commission (commission) under the supervision of the State Board of Education and authorizes the following appropriations:

- Three positions and \$165,000 in approved salary rate,
- \$214,630 in recurring general revenue funds for salaries and benefits,
- \$199,238 in recurring general revenue funds for expenses,
- \$5,700 in nonrecurring general revenue, and
- \$1,179 in recurring general revenue funds for transfer to the Department of Management Services for the Human Resource Services Statewide Contract.

The staffing needs of the commission are likely to increase as the number of charter schools approved under the authority of the commission and its cosponsors grows.

#### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

##### 1. Revenues:

The bill does not impact local government revenues.

##### 2. Expenditures:

The bill would likely impact expenditures of municipalities and community colleges that chose to become cosponsors. The impact is indeterminate.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

The bill would not have a significant impact on the private sector.

**D. FISCAL COMMENTS:**

School district sponsors of charter schools may withhold up to 5% of charter school funding for administrative overhead costs. School districts are not required to document that administrative overhead costs are equal to the amount of funds withheld. The bill would impact school districts to the extent that they would no longer be able to withhold the 5% administrative fee for providing services to charter schools that chose to contract with the commission or one of its cosponsors. However, the costs saved from no longer being responsible to provide those services should balance this reduction in revenue.

The bill authorizes the commission or cosponsor of a charter school approved pursuant to this act to retain no more than the actual cost of its administrative overhead costs expended to sponsor the charter school not to exceed 5 percent of the funding provided to the charter school.

### **III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

**1. Applicability of Municipality/County Mandates Provision:**

The bill does not require a city or county to expend funds or to take any action requiring the expenditure of funds.

The bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

This bill does not reduce the percentage of state tax shared with counties or municipalities.

**2. Other:**

Section 4 of Article 9 of the State Constitution states that each county shall constitute a school district and that the district school board "shall operate, control and supervise all free public schools within the school district..." The bill allows an independent board or cosponsors in the form of municipalities, universities, community colleges, and regional consortia to authorize charter schools.

However, Section 2 of Article 9 of the State Constitution provides that the State Board of Education shall "have such supervision of the system of free public education as is provided by law." This provision requires that the State Board of Education must supervise public education in the manner and to the extent provided by the Legislature. Such language also suggests flexibility in the way the Legislature may determine how the State Board must exercise such supervision.

The Legislature has previously exercised this flexibility with the establishment of other public schools that are not under the control of school districts, including charter lab schools established under section 1002.32, F.S., the Florida Virtual School, and the Florida School for the Deaf and Blind. These other examples reflect the Legislature's authority to direct the State Board of Education's supervision of the overall "system of free public education" under Section 2 of Article 9, as opposed to the traditional school district-controlled "free public schools" referenced more specifically in Section 4 of Article 9.

The bill provides for a statewide commission that is supervised and appointed by the State Board of Education. The commission is specifically required to report to the State Board of Education

regarding the academic performance and fiscal responsibility of all charter schools approved and maintained by the commission or one of its cosponsors. The commission's rulings regarding revocation or non-renewal of cosponsors and charter schools may be appealed to the State Board of Education.

Furthermore, there is a clear nexus between school districts and municipalities, universities, community colleges, and regional consortia when it comes to the provision of education. For example section 1012.98(5), F.S., provides that school districts may coordinate their professional development programs for teachers with an educational consortium, or with a community college or university. Section 1001.42, F.S., allows districts to participate in educational consortia that are designed to provide joint programs and services to cooperating school districts.

Additionally, section 1013.355, F.S., authorizes the creation of educational facilities benefit districts pursuant to an interlocal agreement between the district school board and a municipality or other eligible local government entity. Section 1002.35, F.S., directs that the New World School of the Arts is assigned to Miami-Dade Community College, the Dade County School District, and one or more universities designated by the State Board of Education.

These are just some of the examples that provide evidence of the relationship that districts share with municipalities, universities, community colleges, and regional consortia with regard to public education throughout the state.

#### **B. RULE-MAKING AUTHORITY:**

The bill provides rulemaking authority to the State Board of Education.

### **IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES**

On March 21, 2006, the Choice and Innovation Committee adopted two amendments and reported the PCB favorably as amended. The amendments did the following:

**Amendment 1** - Clarifies that the members of the commission are appointed by the State Board of Education from recommendations provided for each vacancy by the Governor, President of the Senate and the Speaker of the House respectively.

**Amendment 2** - Clarifies that current charter schools with district sponsorship may only apply to the new commission or a cosponsor if its contract with the district is expiring or if the district agrees to let them out of the contract. The amendment also clarifies that conversion charter schools may only submit an application to the commission or cosponsor with permission of the school district and gives the district control over disposition of the facilities and equipment assuming such consent is given.

On April 4, 2006, the Education Appropriations Committee adopted two amendments and reported the bill favorably as amended. The amendments did the following:

**Amendment 1** – Authorizes appropriations to administer the act.

**Amendment 2** – Authorizes the commission or cosponsor of a charter school approved pursuant to this act to retain no more than the actual cost of its administrative overhead costs expended to sponsor the charter school not to exceed 5 percent of the funding provided to the charter school.

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CHAMBER ACTION

The Education Appropriations Committee recommends the following:

**Council/Committee Substitute**

Remove the entire bill and insert:

A bill to be entitled

An act relating to charter schools; creating s. 1002.335, F.S.; providing findings and intent; establishing the Florida Schools of Excellence Commission as a charter school authorizing entity; providing for startup funds; providing for membership of the commission; providing powers and duties of the commission, including serving as a sponsor of charter schools, approving certain entities to act as cosponsors, approving or denying applications for Florida Schools of Excellence (FSE) charter schools, and developing standards for and evaluating the performance of charter schools; requiring collaboration with municipalities, state universities, community colleges, and regional educational consortia as cosponsors for FSE charter schools; providing requirements for approval of cosponsors by the commission; providing components of required cosponsor agreements; providing causes for revocation of approval of a cosponsor; providing for FSE charter school application and review

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procedures; authorizing existing charter schools to apply as FSE charter schools; providing for application of specified provisions of law; requiring access to information by parents; requiring the commission to submit an annual report; requiring rulemaking; amending s. 1002.33, F.S.; providing requirements with respect to the right to appeal a charter school application denial; revising provisions relating to reporting of charter school student enrollment for purposes of funding; revising requirements relating to charter school facilities created to mitigate a certain educational impact; providing appropriations and authorizing positions; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 1002.335, Florida Statutes, is created to read:

1002.335 Florida Schools of Excellence Commission.--

(1) FINDINGS.--The Legislature finds that:

(a) Charter schools are a critical component in the state's efforts to provide efficient and high-quality schools within the state's uniform system of public education.

(b) Charter schools provide valuable educational options and innovative learning opportunities while expanding the capacity of the state's system of public education and empowering parents with the ability to make choices that best fit the individual needs of their children.

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52        (c) The growth of charter schools in the state has  
53        contributed to enhanced student performance, greater efficiency,  
54        and the improvement of all public schools.

55        (d) The greatest challenges to the continued development  
56        and success of uniform, high-quality charter schools are  
57        administrative issues, accountability issues, and a lack of  
58        sufficient communication and support from sponsors.

59        (2) INTENT.--It is the intent of the Legislature that:

60        (a) There be established an independent, state-level  
61        commission whose primary focus is the development and support of  
62        charter schools in order to better meet the growing and diverse  
63        needs of some of the increasing number and array of charter  
64        schools in the state and to further ensure that charter schools  
65        of the highest academic quality are approved and supported  
66        throughout the state in an efficient manner.

67        (b) New sources of community support in the form of  
68        municipalities with knowledge of the unique needs of a  
69        particular community or state universities, community colleges,  
70        or regional educational consortia with special education  
71        expertise should be authorized to participate in developing and  
72        supporting charter schools that maximize access to a wide  
73        variety of high-quality educational options for all students  
74        regardless of disability, race, or socioeconomic status.

75        (3) FLORIDA SCHOOLS OF EXCELLENCE COMMISSION.--

76        (a) The Florida Schools of Excellence Commission is  
77        established as an independent, state-level charter school  
78        authorizing entity working in collaboration with the Department  
79        of Education and under the supervision of the State Board of

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80 Education. Startup funds necessary to establish and operate the  
81 commission may be received through private contributions and  
82 federal and other institutional grants through the Grants and  
83 Donations Trust Fund and the Educational Aids Trust Fund housed  
84 within the department in addition to funds provided in the  
85 General Appropriations Act. The department shall assist in  
86 securing federal and other institutional grant funds to  
87 establish the commission.

88 (b) The commission shall be appointed by the State Board  
89 of Education and shall be composed of three appointees  
90 recommended by the Governor, two appointees recommended by the  
91 President of the Senate, and two appointees recommended by the  
92 Speaker of the House of Representatives. The Governor, the  
93 President of the Senate, and the Speaker of the House of  
94 Representatives shall each recommend a list of no fewer than two  
95 nominees for any appointment to the commission. The appointments  
96 shall be made as soon as feasible but no later than September 1,  
97 2006. Each member shall serve a term of 2 years; however, for  
98 the purpose of providing staggered terms, of the initial  
99 appointments, three members shall be appointed to 1-year terms  
100 and four members shall be appointed to 2-year terms. Thereafter,  
101 each appointee shall serve a 2-year term unless the State Board  
102 of Education, after review, extends the appointment. If a  
103 vacancy occurs on the commission, it shall be filled by the  
104 State Board of Education from a recommendation by the  
105 appropriate authority according to the procedure set forth in  
106 this paragraph. The members of the commission shall annually  
107 vote to appoint a chair and a vice chair.



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108        (c) The commission is encouraged to convene its first  
109 meeting no later than October 1, 2006, and, thereafter, shall  
110 meet each month at the call of the chair or upon the request of  
111 four members of the commission. Four members of the commission  
112 shall constitute a quorum.

113        (d) The commission shall appoint an executive director who  
114 shall employ such staff as is necessary to perform the  
115 administrative duties and responsibilities of the commission.

116        (e) The members of the commission shall not be compensated  
117 for their services on the commission but may be reimbursed for  
118 per diem and travel expenses pursuant to s. 112.061.

119        (4) POWERS AND DUTIES.--

120        (a) The commission shall have the power to:

121        1. Authorize and act as a sponsor of charter schools,  
122 including the approval or denial of charter school applications  
123 pursuant to subsection (8) and the nonrenewal or termination of  
124 charter schools pursuant to s. 1002.33(8).

125        2. Authorize municipalities, state universities, community  
126 colleges, and regional educational consortia to act as  
127 cosponsors of charter schools, including the approval or denial  
128 of cosponsor applications pursuant to State Board of Education  
129 rule and subsection (5) and the revocation of approval of  
130 cosponsors pursuant to State Board of Education rule and  
131 subsection (7).

132        3. Approve or deny Florida Schools of Excellence (FSE)  
133 charter school applications and renew or terminate charters of  
134 FSE charter schools.

135        (b) The commission shall have the following duties:

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1. Review charter school applications and assist in the establishment of Florida Schools of Excellence (FSE) charter schools throughout the state. An FSE charter school shall exist as a public school within the state as a component of the delivery of public education within Florida's K-20 education system.

2. Develop, promote, and disseminate best practices for charter schools and charter school sponsors in order to ensure that high-quality charter schools are developed and incentivized. At a minimum, the best practices shall encourage the development and replication of academically and financially proven charter school programs.

3. Develop, promote, and require high standards of accountability for any school that applies and is granted a charter under this section.

4. Monitor and annually review and evaluate the performance of the charter schools it sponsors and hold the schools accountable for their performance.

5. Report the student enrollment in each of its sponsored charter schools to the district school board of the county in which the school is located.

6. Work with its cosponsors to monitor the financial management of each FSE charter school.

7. Direct charter schools and persons seeking to establish charter schools to sources of private funding and support.

8. Actively seek, with the assistance of the department, supplemental revenue from federal grant funds, institutional grant funds, and philanthropic organizations. The commission

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may, through the department's Grants and Donations Trust Fund, receive and expend gifts, grants, and donations of any kind from any public or private entity to carry out the purposes of this section.

9. Review and recommend to the Legislature any necessary revisions to statutory requirements regarding the qualification and approval of municipalities, state universities, community colleges, and regional educational consortia as cosponsors for FSE charter schools.

10. Review and recommend to the Legislature any necessary revisions to statutory requirements regarding the standards for accountability and criteria for revocation of approval of cosponsors of FSE charter schools.

11. Assist its cosponsors and FSE charter schools in cooperating with district school boards to allow the charter schools to utilize unused space within district public schools.

12. Collaborate with municipalities, state universities, community colleges, and regional educational consortia as cosponsors for FSE charter schools for the purpose of providing the highest level of public education to low-income, low-performing, and underserved student populations. Such collaborations shall:

a. Allow state universities and community colleges that cosponsor FSE charter schools to enable students attending a charter school to take college courses and receive high school and college credit for such courses.

b. Be used to determine the feasibility of opening charter schools for children with autism that work with and utilize the

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specialized expertise of the Centers for Autism and Related Disabilities established and operated pursuant to s. 1004.55.

13. Support municipalities when the mayor or chief executive, through resolution passed by the governing body of the municipality, expresses an intent to cosponsor and establish charter schools within the municipal boundaries.

14. Meet the needs of charter schools and school districts by uniformly administering high-quality charter schools, thereby removing administrative burdens from the school districts.

15. Work with school districts to assist them in effectively providing administrative services to their charter schools.

16. Perform all of the duties of sponsors set forth in s. 1002.33(5)(b) and (20).

(5) APPROVAL OF COSPONSORS.--

(a) The commission shall begin accepting applications by municipalities, state universities, community colleges, and regional educational consortia no later than January 31, 2007. The commission shall have 90 days from receipt of an application under this paragraph to approve or deny the application unless the 90-day period is waived by the applicant.

(b) The commission shall limit the number of charter schools that a cosponsor may approve pursuant to its review of the cosponsor's application under paragraph (c). Upon application by the cosponsor and review by the commission of the performance of a cosponsor's current charter schools, the commission may approve a cosponsor's application to raise the limit previously set by the commission.

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220        (c) Any entity set forth in paragraph (a) that is  
221        interested in becoming a cosponsor pursuant to this section  
222        shall prepare and submit an application to the commission that  
223        provides evidence that the entity:

224            1. Has the necessary staff and infrastructure or has  
225        established the necessary contractual or interagency  
226        relationships to ensure its ability to handle all of the  
227        administrative responsibilities required of a charter school  
228        sponsor as set forth in s. 1002.33(20).

229            2. Has the necessary staff expertise and infrastructure or  
230        has established the necessary contractual or interagency  
231        relationships to ensure that it will approve and is able to  
232        develop and maintain charter schools of the highest academic  
233        quality.

234            3. Has and is committed to providing and pursuing the  
235        necessary public and private financial resources and staff to  
236        ensure that it can monitor and support charter schools that are  
237        economically efficient and fiscally sound.

238            4. Is committed to providing equal access to all students  
239        and to maintaining a diverse student population within its  
240        charter schools.

241            5. Is committed to focusing on low-income, low-performing,  
242        and underserved student populations.

243            6. Has articulated annual goals and expected outcomes for  
244        its charter schools as well as the methods and plans by which it  
245        will achieve those goals and outcomes.

246            7. Has policies in place to protect its cosponsoring  
247        practices from conflicts of interest.

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248        (d) The commission's decision to deny an application or to  
249 revoke approval of a cosponsor pursuant to subsection (7) is not  
250 subject to chapter 120 and may be appealed to the State Board of  
251 Education pursuant to s. 1002.33(6).

252        (6) COSPONSOR AGREEMENT.--

253        (a) Upon approval of a cosponsor, the commission and the  
254 cosponsor shall enter into an agreement that defines the  
255 cosponsor's rights and obligations and includes the following:

256            1. An explanation of the personnel, contractual and  
257 interagency relationships, and potential revenue sources  
258 referenced in the application as required in paragraph (5)(c).

259            2. Incorporation of the requirements of equal access for  
260 all students, including any plans to provide transportation  
261 reasonably necessary to provide access to as many students as  
262 possible.

263            3. Incorporation of the requirement to focus on low-  
264 income, low-performing, and underserved student populations.

265            4. An explanation of the goals and expected outcomes for  
266 the cosponsor's charter schools and the method and plans by  
267 which they will be achieved as referenced in the application.

268            5. The conflict-of-interest policies referenced in the  
269 application.

270            6. An explanation of the disposition of facilities and  
271 assets upon termination and dissolution of a charter school  
272 approved by the cosponsor.

273            7. A provision requiring the cosponsor to annually appear  
274 before the commission and provide a report as to the information

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provided pursuant to s. 1002.33(9)(1) for each of its charter schools.

8. A provision requiring that the cosponsor report the student enrollment in each of its sponsored charter schools to the district school board of the county in which the school is located.

9. A provision requiring that the cosponsor work with the commission to provide the necessary reports to the State Board of Education.

10. Any other reasonable terms deemed appropriate by the commission given the unique characteristics of the cosponsor.

(b) No cosponsor may receive applications for charter schools until a cosponsor agreement with the commission has been approved and signed by the commission and the appropriate individuals or governing bodies of the cosponsor.

(c) The cosponsor agreement shall be proposed and negotiated pursuant to the timeframes set forth in s. 1002.33(6)(i).

(d) The cosponsor agreement shall be attached to and shall govern all charter school contracts entered into by the cosponsor.

(7) CAUSES FOR REVOCATION OF APPROVAL OF A COSPONSOR.--If at any time the commission finds that a cosponsor is not in compliance, or is no longer willing to comply, with its contract with a charter school or with its cosponsor agreement with the commission, the commission shall provide notice and a hearing in accordance with State Board of Education rule. If after a hearing the commission confirms its initial finding, the

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commission shall revoke the cosponsor's approval. The commission may assume sponsorship over any charter school sponsored by the cosponsor at the time of revocation. Thereafter, the commission may assume permanent sponsorship over such school or may direct the school's governing body to apply to another cosponsor or to the appropriate district school board for sponsorship.

(8) CHARTER SCHOOL APPLICATION AND REVIEW.--Charter school applications submitted to the commission or to a cosponsor approved by the commission pursuant to subsection (5) shall be subject to the same requirements set forth in s. 1002.33(6). The commission or cosponsor shall receive and review all applications for FSE charter schools according to the provisions of s. 1002.33(6)(b). All references to a district school board in s. 1002.33(6)(b) shall refer to the commission or its cosponsors that receive applications for review.

(9) APPLICATIONS OF EXISTING CHARTER SCHOOLS.--

(a) An application may be submitted pursuant to this section by an existing charter school approved by a district school board provided that the obligations of its charter contract with the district school board will expire prior to entering into a new charter contract with the commission or one of its cosponsors. A district school board may agree to rescind or waive the obligations of a current charter contract to allow an application to be submitted by an existing charter school pursuant to this section. A charter school that changes sponsors pursuant to this subsection shall be allowed to continue the use of all facilities, equipment, and other assets it owned or



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330 leased prior to the expiration or rescission of its contract  
331 with a district school board sponsor.

332 (b) An application to the commission or one of its  
333 cosponsors by a conversion charter school may only be submitted  
334 upon consent of the district school board. In such instance, the  
335 district school board may retain the facilities, equipment, and  
336 other assets of the conversion charter school for its own use or  
337 agree to reasonable terms for their continued use by the  
338 conversion charter school.

339 (10) APPLICATION OF CHARTER SCHOOL STATUTE.--

340 (a) The provisions of s. 1002.33(7)-(12), (14), and (16)-  
341 (19) shall apply to the commission and the cosponsors and  
342 charter schools approved pursuant to this section.

343 (b) The provisions of s. 1002.33(20) shall apply to the  
344 commission and the cosponsors and charter schools approved  
345 pursuant to this section with the exception that the commission  
346 or a cosponsor of a charter school approved pursuant to this  
347 section may retain no more than the actual cost of its  
348 administrative overhead costs expended to sponsor the charter  
349 school not to exceed 5 percent of the funding provided to the  
350 charter school.

351 (11) ACCESS TO INFORMATION.--The commission shall provide  
352 maximum access to information to all parents in the state. It  
353 shall maintain information systems, including, but not limited  
354 to, a user-friendly Internet website, that will provide  
355 information and data necessary for parents to make informed  
356 decisions. At a minimum, the commission must provide parents  
357 with information on its accountability standards, links to

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schools of excellence throughout the state, and public education programs available in the state.

(12) ANNUAL REPORT.--Each year, the chair of the commission shall appear before the State Board of Education and submit a report regarding the academic performance and fiscal responsibility of all charter schools and cosponsors approved under this section.

(13) IMPLEMENTATION.--The State Board of Education shall adopt rules pursuant to ss. 120.536(1) and 120.54 necessary to facilitate the implementation of this section.

Section 2. Paragraphs (d), (e), (f), (g), and (h) of subsection (6) of section 1002.33, Florida Statutes, are redesignated as paragraphs (e), (f), (g), (h), and (i), respectively, a new paragraph (d) is added to that subsection, and paragraph (a) of subsection (17) and paragraph (f) of subsection (18) of that section are amended, to read:

1002.33 Charter schools.--

(6) APPLICATION PROCESS AND REVIEW.--Beginning September 1, 2003, applications are subject to the following requirements:

(d) The right to appeal an application denial under paragraph (c) shall be contingent on the applicant having submitted the same or a substantially similar application to the Florida Schools of Excellence Commission or one of its cosponsors. Any such applicant whose application is denied by the commission or one of its cosponsors subsequent to its denial by the district school board may exercise its right to appeal the district school board's denial under paragraph (c) within 30 days after receipt of the commission's or cosponsor's denial or

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386 failure to act on the application. However, the applicant  
387 forfeits its right to appeal under paragraph (c) if it fails to  
388 submit its application to the commission or one of its  
389 cosponsors by August 1 of the school year immediately following  
390 the district school board's denial of the application.

391 (17) FUNDING.--Students enrolled in a charter school,  
392 regardless of the sponsorship, shall be funded as if they are in  
393 a basic program or a special program, the same as students  
394 enrolled in other public schools in the school district. Funding  
395 for a charter lab school shall be as provided in s. 1002.32.

396 (a) Each charter school shall report its student  
397 enrollment to the sponsor ~~district school board~~ as required in  
398 s. 1011.62, and in accordance with the definitions in s.  
399 1011.61. The sponsor ~~district school board~~ shall include each  
400 charter school's enrollment in the district's report of student  
401 enrollment. All charter schools submitting student record  
402 information required by the Department of Education shall comply  
403 with the Department of Education's guidelines for electronic  
404 data formats for such data, and all districts shall accept  
405 electronic data that complies with the Department of Education's  
406 electronic format.

407 (18) FACILITIES.--

408 (f) To the extent that charter school facilities are  
409 specifically created to mitigate the educational impact created  
410 by the development of new residential dwelling units, pursuant  
411 to subparagraph (2)(c)4., some of or all of the educational  
412 impact fees required to be paid in connection with the new  
413 residential dwelling units may be designated instead for the

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CODING: Words stricken are deletions; words underlined are additions.

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414 construction of the charter school facilities that will mitigate  
415 the student station impact. Such facilities shall be built to  
416 the State Requirements for Educational Facilities and shall be  
417 owned by a public or nonprofit entity. The sponsor ~~local school~~  
418 ~~district~~ retains the right to monitor and inspect such  
419 facilities to ensure compliance with the State Requirements for  
420 Educational Facilities. If a facility ceases to be used for  
421 public educational purposes, either the facility shall revert to  
422 the sponsor ~~school district~~ subject to any debt owed on the  
423 facility, or the owner of the facility shall have the option to  
424 refund all educational impact fees utilized for the facility to  
425 the sponsor ~~school district~~. The district and the owner of the  
426 facility may contractually agree to another arrangement for the  
427 facilities if the facilities cease to be used for educational  
428 purposes. The owner of property planned or approved for new  
429 residential dwelling units and the entity levying educational  
430 impact fees shall enter into an agreement that designates the  
431 educational impact fees that will be allocated for the charter  
432 school student stations and that ensures the timely construction  
433 of the charter school student stations concurrent with the  
434 expected occupancy of the residential units. The application for  
435 use of educational impact fees shall include an approved charter  
436 school application. To assist the school district in forecasting  
437 student station needs, the entity levying the impact fees shall  
438 notify the affected district of any agreements it has approved  
439 for the purpose of mitigating student station impact from the  
440 new residential dwelling units.

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441       Section 3.   The following sums of money and full-time  
442   equivalent positions are appropriated from general revenue to  
443   the State Board of Education for the 2006-2007 fiscal year for  
444   the purpose of administering this act:

445       (1)   Three full-time equivalent positions and \$165,000 in  
446   approved annual salary rate;

447       (2)   The sum of \$214,630 from recurring general revenue  
448   funds for salaries and benefits;

449       (3)   The sum of \$199,238 from recurring general revenue  
450   funds for expenses;

451       (4)   The sum of \$5,700 from nonrecurring general revenue  
452   funds for operating capital outlay; and

453       (5)   The sum of \$1,179 from recurring general revenue funds  
454   for transfer to the Department of Management Services for the  
455   Human Resource Services Statewide Contract.

456       Section 4.   This act shall take effect July 1, 2006.